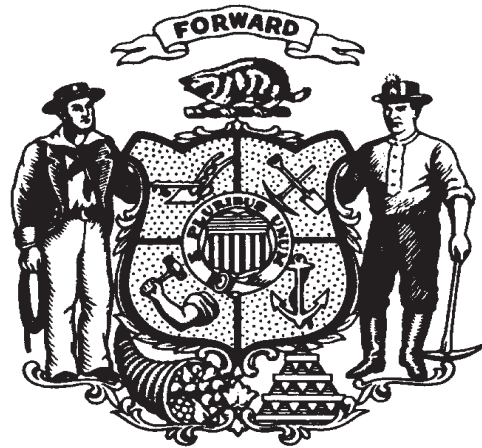


Wisconsin Administrative Register

No. 687



Publication Date: March 31, 2013

Effective Date: April 1, 2013



Legislative Reference Bureau
<http://www.legis.state.wi.us/rsb/code.htm>



WISCONSIN ADMINISTRATIVE REGISTER

The Wisconsin Administrative Register is published twice monthly by the Legislative Reference Bureau.

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Table of Contents

Emergency Rules Now in Effect.**Pages 4 to 7**

Agriculture, Trade and Consumer Protection:

Revise Chapter ATPC 55, relating to allowing certain selected Wisconsin state-inspected meat establishments to sell meat and meat products in other states and thereby affecting small business. **EmR1213**

Create section 161.50 (3) (f) and subch VI of ch. ATPC 161, relating to the “grow Wisconsin dairy producer” grant and loan program. **EmR1301**

Children and Families:

Safety and Permanence, Chs. DCF 37–59

Create Chapter DCF 55, relating to subsidized guardianship. **EmR1212**

Early Care and Education, Chs. DCF 201–252

Create section DCF 201.04 (2j), relating to circumstances for a waiver to allow child care subsidy payments for a parent who is a child care provider and affecting small businesses. **EmR1216**

Justice:

Re-create Chapter Jus 17 and Chapter Jus 18, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the recognition by Wisconsin of concealed carry licenses issued by other states; and the certification of firearms safety and training instructors. **EmR1217**

Natural Resources:

Fish, Game, etc., Chs. NR 1—

Revise Chapters NR 10, 12, and 19, relating to the wolf hunting and trapping season and regulations and a depredation program. **EmR1210**

Fish, Game, etc., Chs. NR 1—

Revise Chapters NR 20 and 25, relating to lake trout harvest limits in Lake Superior. **EmR1304**

Public Instruction:

Re-create Chapter PI 47, relating to the equivalency process for approving alternative models to evaluate educator practice. **EmR1303**

Safety and Professional Services:

Professional Services, Chs. 1–299

Amend Chapters SPS 60, 61, 62, and 65 and create Chapter SPS 205, relating to barbers and to barbering and cosmetology schools and instructors. **EmR1302**

Scope Statements.**Pages 8 to 20**

Administration:

Revises Chapter Adm 2, relating to facility use. **SS 028–13**

Natural Resources:

Fish, Game, etc. Chs. NR 1—

Revises Chapters NR 1, 8, 10, 11, 12, 13, 15, and 19, relating to deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee’s Report. **SS 024–13**

Fish, Game, etc. Chs. NR 1—

Revises Chapters NR 10, 11, 12, 15, 16, 18, and 45, relating to the 2013 Bureau of Wildlife Management housekeeping rule amending. **SS 025–13**

Fish, Game, etc. Chs. NR 1—

Revises Chapter NR 19, relating to wildlife rehabilitation. **SS 026–13**

Fish, Game, etc. Chs. NR 1—

Revises Chapter NR 8, 10, 11, 15, and 18, relating to migratory bird hunting regulations. **SS 027–13**

Safety and Professional Services—Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors:

Revises Chapter A–E 13, relating to Continuing Education (CE). **SS 021–13**

Safety and Professional Services:

Professional Services, Chs. SPS 1—299

Revises Sections SPS 1.08 (2), 2.10 (1), and 8.03 (3), and ch. SPS 3 Appendix 1, relating to hearings, injunctions, and warnings. **SS 022–13**

Professional Services, Chs. SPS 1—299

Revises Chapters SPS 192 to 196, 100 to 105, and 110 to 116, relating to mixed martial arts, amateur boxing, and professional boxing. **SS 023–13**

Submittal of Proposed Rules to Legislative Council Clearinghouse.

Page 21

Natural Resources

Fish, Game, etc., Chs. 1—***Environmental Protection—General, Chs. 100—******Environmental Protection—Water Regulation, Chs. 300—******Environmental Protection—Air Pollution Control, Chs. 400—******Environmental Protection—Solid Waste Management, Chs. 500—******Environmental Protection—Hazardous Waste Management, Chs. 600—******Environmental Protection—Water Supply, Chs. 800—***

Revises Chapters NR 2, 19, 51, 108, 110, 126, 134, 150, 166, 101, 300, 305, 310, 327, 345, 410, 512, 670, and 820, relating to environmental analysis and review procedures under the Wisconsin Environmental Policy Act. **CR 13–022**

Fish, Game, etc., Chs. 1—

Hearing to consider rule revising Chapter NR 1, relating to contracting with cooperating foresters and private contractors for regeneration services. **CR 13–023**

Safety and Professional Services—
Examining Board of Architects, Landscape Architects,
Professional Engineers, Designers, and Land Surveyors:

Revises Sections A–E 2.02 (7) (a), 2.02 (7) (b), and 2.02 (7) (b) 2., relating to electronic seals and signatures. **CR 13–020**

Rule–Making Notices.

Pages 22 to 39

Natural Resources:

Fish, Game, etc., Chs. 1—

Hearing to consider rule revising Chapters NR 20 and 25, relating to lake trout harvest limits on Lake Superior. **EmR1304**

Fish, Game, etc., Chs. 1—
Environmental Protection—General, Chs. 100—
Environmental Protection—Water
Regulation, Chs. 300—
Environmental Protection—Air Pollution
Control, Chs. 400—
Environmental Protection—Solid Waste
Management, Chs. 500—Environmental
Protection—Hazardous Waste Management, Chs. 600—
Environmental Protection—Water Supply, Chs. 800—
Hearing to consider rule revising Chapters NR 2, 19, 51, 108, 110, 126, 134, 150, 166, 101, 300, 305, 310, 327, 345, 410, 512, 670, and 820, relating to the department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act. **CR 13-022**

Fish, Game, etc., Chs. 1—
Hearing to consider rule revising Chapter NR 1, relating to the establishing a program allowing cooperating foresters and private contractors to assist the state in regenerating harvested areas of state lands to meet the annual allowable timber harvest established under Wis. Stat. s. 28.025. **CR 13-023**

Safety and Professional Services—Pharmacy Examining Board

Hearing to consider rule revising Section Phar 7.01 (1) (e), relating to delivery of prescription drugs. **CR 13-018**

Safety and Professional Services—Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

Hearing to consider rule revising Sections A-E 2.02 (7) (a), 2.02 (7) (b), and 2.02 (7) (b) 2., relating to electronic seals and signatures. **CR 13-020**

Submittal of Proposed Rules to the Legislature.

Page 40

Children and Families:

Safety and Permanence, Chs. 35—59

Revises Chapter DCF 55, relating to subsidized guardianship. **CR 12-045**

Natural Resources:

Environmental Protection—Investigation and Remediation of Environmental Contamination, Chs. NR 700—

Revises Chapters NR 169, 700 to 750, relating to investigation and remediation of contaminated properties. **CR 12-023**

Safety and Professional Services—Cosmetology Examining Board:

Revises Chapters Cos 2 and 6, relating to supervision of cosmetology and barbering apprentices. **CR 12-016**

Sections Affected.

Pages 41 to 43

Public Notices.

Pages 44 to 45

Health and Family Services:

Medicaid Reimbursement for Outpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Critical Access Hospitals, Major Border Status Hospitals, Non State Public, Psychiatric Hospitals, and Rehabilitation Hospitals State of Wisconsin Medicaid Payment Plan for Rate Year 2013

Emergency Rules Now in Effect

Under s. 227.24, Stats., state agencies may promulgate rules without complying with the usual rule-making procedures. Using this special procedure to issue emergency rules, an agency must find that either the preservation of the public peace, health, safety or welfare necessitates its action in bypassing normal rule-making procedures.

Emergency rules are published in the official state newspaper, which is currently the Wisconsin State Journal. Emergency rules are in effect for 150 days and can be extended up to an additional 120 days with no single extension to exceed 60 days.

Occasionally the Legislature grants emergency rule authority to an agency with a longer effective period than 150 days or allows an agency to adopt an emergency rule without requiring a finding of emergency.

Extension of the effective period of an emergency rule is granted at the discretion of the Joint Committee for Review of Administrative Rules under s. 227.24 (2), Stats.

Notice of all emergency rules which are in effect must be printed in the Wisconsin Administrative Register. This notice will contain a brief description of the emergency rule, the agency finding of emergency or a statement of exemption from a finding of emergency, date of publication, the effective and expiration dates, any extension of the effective period of the emergency rule and information regarding public hearings on the emergency rule.

Copies of emergency rule orders can be obtained from the promulgating agency. The text of current emergency rules can be viewed at www.legis.state.wi.us/rsb/code.

Beginning with rules filed with the Legislative Reference Bureau in 2008, the Legislative Reference Bureau will assign a number to each emergency rule filed, for the purpose of internal tracking and reference. The number will be in the following form: EmR0801. The first 2 digits indicate the year of filing and the last 2 digits indicate the chronological order of filing during the year.

Agriculture, Trade and Consumer Protection (2)

1. EmR1213 (DATCP Docket # 11-R-11) — The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to amend **sections ATP 55.04 (title), (2) (title), (a) and (b), and (6), 55.07 (1) (a), (2) (a) and (3) (a);** and to create **sections ATP 55.02 (4m), 55.03 (2) (f), 55.04 (1m), 55.06 (5) (j), 55.07 (1) (c), (2) (d) and (3) (c),** relating to allowing certain selected Wisconsin state-inspected meat establishments to sell meat and meat products in other states and thereby affecting small business.

This rule was approved by the governor on September 6, 2012.

The statement of scope for this rule, SS 005-12, was approved by the governor on January 11, 2012, published in Register No. 673, on January 31, 2012, and approved by the Natural Resources Board on February 22, 2012.

Finding of Emergency

The department of agriculture, trade and consumer protection finds that an emergency exists and that the attached

rule is necessary for the immediate preservation of the public welfare. Statements of the facts constituting the emergency are:

(1) Wisconsin has more than 270 small state-inspected meat establishments that contribute to the vitality of the state's rural economy, producing many unique, specialty products. Wisconsin's state-inspected meat and poultry establishments are inspected by Wisconsin's Bureau of Meat Safety and Inspection under a cooperative agreement with the United States Department of Agriculture's (USDA's) Food Safety and Inspection Service (FSIS) program. Under the cooperative agreement, state meat inspection programs must provide inspection that is "at least equal to" federal inspection under the Federal Meat Inspection Act (FMIA) (21 USC 661) and the Poultry Products Inspection Act (PPIA) (21 USC 454). State-inspected meat and poultry establishments are prohibited from selling their products in other states.

(2) USDA recently established the new Cooperative Interstate Shipment (CIS) program, which will allow state-inspected meat and poultry establishments to sell their products in other states. To qualify for participation in the CIS program, state meat and poultry inspections programs must inspect establishments that volunteer to participate in the program using procedures that are the "same as", rather than "at least equal to," USDA's federal inspections under FMIA and PPIA. This emergency rule incorporates certain federal regulations that Wisconsin's state meat inspection program must adopt in order to establish a regulatory foundation deemed the "same as" the foundation for the federal program, and thereby allowing Wisconsin to participate in the CIS program.

(3) The department of agriculture, trade and consumer protection (DATCP) is adopting this emergency rule to prevent a potential hardship to Wisconsin's state-inspected meat establishments selected to participate in the program; adoption of the emergency rule will ensure that these establishments are not prevented from selling their meat and poultry products in other states because the pending "permanent" rules cannot be adopted in time.

Filed with LRB:	September 10, 2012
Publication Date:	September 13, 2012
Effective Dates:	September 13, 2012 through February 9, 2013
Extension Through:	April 10, 2013
Hearing Date:	October 15, 18, 19, 2012

2. EmR1301 (DATCP Docket # 12-R-10) — The Wisconsin department of agriculture, trade and consumer protection hereby adopts the following emergency rule to create **s. 161.50 (3) (f) and subch. VI of ch. ATP 161,** relating to the "grow Wisconsin dairy producer" grant and loan program created under ss. 20.115 (4) (d) and 93.40 (1) (g), Stats.

This rule was approved by the governor on January 14, 2013.

The scope statement for this rule, SS 090-12, was approved by the governor on November 8, 2012, published in Register No. 683, on November 30, 2012, and approved by the Board of Agriculture, Trade and Consumer Protection on December 18, 2012.

Finding of Emergency

Enactment of a rule is necessary to establish criteria the department will use to make determinations for grants, loans or other forms of financial assistance to dairy producers to promote and develop the dairy industry. An emergency rule is needed to ensure that funds are used to assist dairy producers during the second year of the annual appropriation as permanent rules cannot be adopted in time to provide the basis for grant determinations for the second year appropriations.

Filed with LRB: January 31, 2013
Publication Date: February 1, 2013
Effective Dates: February 1, 2013 through June 30, 2013

Children and Families
Safety and Permanence, Chs. DCF 37–59

EmR1212 — The Wisconsin Department of Children and Families orders the creation of **Chapter DCF 55**, relating to subsidized guardianship.

This emergency rule was approved by the governor on August 28, 2012.

The statement of scope for this rule, SS 040–12, was approved by the governor on June 8, 2012, published in Register No. 678 on June 30, 2012, and approved by Secretary Eloise Anderson on July 16, 2012.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Guardians who entered into subsidized guardianship agreements with an agency when the statewide subsidized guardianship program was implemented in August 2011 are now eligible for consideration of an amendment to increase the amount of the subsidized guardianship payments. The rule includes the process for determining eligibility for an amendment.

Filed with LRB: August 31, 2012
Publication Date: September 3, 2012
Effective Dates: September 3, 2012 through January 30, 2013
Extension Through: March 31, 2013
Hearing Date: November 30, 2012

Children and Families
Early Care and Education, Chs. DCF 201–252

EmR1216 — The Wisconsin Department of Children and Families orders the creation of **section DCF 201.04 (2j)**, relating to circumstances for a waiver to allow child care subsidy payments for a parent who is a child care provider and affecting small businesses.

This emergency rule was approved by the governor on October 19, 2012.

The statement of scope for this rule, SS 054–12, was approved by the governor on July 30, 2012, published in

Register No. 680 on August 14, 2012, and approved by Secretary Eloise Anderson on August 27, 2012.

Finding of Emergency

The Department of Children and Families finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

Section 49.155 (3m) (d), Stats., as affected by 2011 Wisconsin Act 32, provides that no child care subsidy funds may be used for child care services that are provided for a child by a child care provider who is the parent of the child or who resides with the child. In addition, no child care subsidy funds may be used for child care services that are provided by another child care provider if the child's parent is a child care provider. The prohibition on assistance does not apply if the child's parent has applied for, and been granted, a waiver. Implementation of an emergency rule specifying the circumstances under which the department or an agency will grant a waiver is necessary to protect certain vulnerable children.

Filed with LRB: November 13, 2012
Publication Date: November 15, 2012
Effective Dates: November 15, 2012 through April 13, 2013
Hearing Date: January 14, 2013

Justice

EmR1217 — The State of Wisconsin Department of Justice ("DOJ") proposes an order to re-create **Chapter Jus 17 and Chapter Jus 18**, relating to licenses authorizing persons to carry concealed weapons; concealed carry certification cards for qualified former federal law enforcement officers; the recognition by Wisconsin of concealed carry licenses issued by other states; and the certification of firearms safety and training instructors.

The statement of scope for these emergency rules was approved by Governor Walker on February 15, 2012, published in Administrative Register No. 674, on February 29, 2012, and approved by Attorney General J.B. Van Hollen on March 12, 2012.

These emergency rules were approved in writing by the governor on December 4, 2012, pursuant to Wis. Stat. s. 227.24 (1) (e) 1g.

Finding of Emergency

Under section 101 of 2011 Wis. Act 35, DOJ has been statutorily required to receive and process concealed carry license applications and to issue or deny licenses since November 1, 2011. The Legislature has thus determined that the public welfare requires the licensing system commenced on that date to remain continuously in effect. In order for DOJ to accomplish that goal and comply with all applicable statutory requirements, it is necessary to continuously have in effect administrative rules establishing the procedures and standards that govern the enforcement and administration of those requirements.

Emergency rules governing the licensing process were first adopted on October 25, 2011, and have been continuously in effect since November 1, 2011. The emergency rules were subsequently repealed and recreated with an effective date of March 21, 2012. Pursuant to s. 227.24 (2) (a), Stats., the Joint Committee for the Review of Administrative Rules has authorized the current emergency rules to remain in effect through December 15, 2012.

DOJ is in the process of promulgating permanent administrative rules which, when completed, will replace the emergency rules. On September 5, 2012, the final draft of the proposed permanent rules and accompanying reports were submitted for legislative review, pursuant to s. 227.19 (2), Stats. The permanent rulemaking process, however, will not be completed prior to the anticipated expiration of the existing emergency rules on December 15, 2012. Upon such expiration, DOJ would no longer have in effect administrative rules establishing the procedures and standards that govern the concealed carry licensing program. Any such lack of continuity in the operation of the licensing program would be confusing and disruptive both for license applicants and for DOJ staff administering the program.

The public welfare thus requires that additional emergency rules be promulgated, in order to ensure that there is no interruption in DOJ's ability to continue to carry out all of its statutory responsibilities in administering and enforcing the concealed carry licensing program. These rules will prevent such a discontinuity and ensure continuous and uniform operation of the concealed carry program through the time of completion of the permanent rulemaking process that is already under way. Only if DOJ utilizes the emergency rulemaking procedures of s. 227.24, Stats., can these emergency rules be promulgated and in effect in time to prevent discontinuity in the operation of the existing rules. The public welfare thus necessitates that the rules proposed here be promulgated as emergency rules under s. 227.24, Stats.

Filed with LRB: December 10, 2012
Publication Date: December 15, 2012
Effective Dates: December 15, 2012 through May 13, 2013

Natural Resources (2)

Fish, Game, etc., Chs. NR 1—

1. EmR1210 (DNR # WM-09-12(E))— The Wisconsin Natural Resources Board proposes an order to amend **sections NR 10.001 (25c), 10.02 (1), 10.06 (5) and (8) (intro.), 10.07 (2) (b) 2., 10.07 (2m) (intro.) and (e) (intro.), 10.07 (2m) (f) (intro.), 10.09 (1), 10.13 (1) (b) 9., 10.13 (1) (b) 15., 10.13 (1) (b) 16., 10.145 (intro.), 10.145 (3) to (8), 12.10 (intro.), 12.10 (1) (a) 4., 12.10 (1) (b) 2., 12.15 (13) and 19.25 and to create sections NR 10.001 (22q), 10.001 (23a), 10.001 (23am), 10.001 (23b), 10.001 (26g), 10.001 (33), 10.01 (3) (j), 10.07 (1) (m), 10.07 (2m) (em), 10.07 (2m) (g) 3., NR 10.07 (4), 10.13 (1) (b) 15m., 10.13 (1) (b) 18., 10.145 (1m), (1u) and Note, sections NR 10.16 (5), 10.295, 12.15 (11) (e), 12.60 to 12.63, 12.64 (1) (a) and (b) (intro.) 1., 12.64 (1) (b) 2. and 3., 12.64 (1) (b) 4. and 5., 12.64 (2) (a) to (c), 12.64 (2) (d), 12.64 (3) and 12.65, relating to the wolf hunting and trapping season and regulations and a depredation program.**

This emergency rule was approved by the governor on August 10, 2010.

The statement of scope for this rule, SS 023-12, was approved by the governor on April 12, 2012, published in Register No. 676, on April 30, 2012, and approved by the Natural Resources Board on May 23, 2012.

Finding of Emergency

A non-statutory provision, SECTION 21, of 2011 ACT 169 requires the department to submit rules necessary for

implementation or interpretation and establishes that the department is not required to make a finding of emergency.

Filed with LRB: August 15, 2012

Publication Date: August 18, 2012

Effective Dates: August 18, 2012 through the date on which the permanent rules take effect, as provided in 2011 Wisconsin Act 169, section 21.

2. EmR1304 (DNR # FH-23-12(E))— The Wisconsin Natural Resources Board proposes an order to amend **sections NR 20.20 (73) (n) 4., 25.06 (1) (a), and 25.09 (1) (am) 3. e.,** relating to lake trout harvest limits in Lake Superior.

The statement of scope for this rule, SS 097-12, was approved by the Governor on December 14, 2012, published in Register No. 684 on December 31, 2012, and approved by the Natural Resources Board on January 23, 2013.

Finding of Emergency

Pursuant to s. 227.24, Stats., the department finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The continued, persistent decline in lake trout population abundances and predicted further declines necessitate the current reductions in order to ensure a sustainable lake trout fishery over the long-term. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through administrative code. This emergency rule is needed to preserve the public welfare.

Filed with LRB: March 9, 2013

Publication Date: March 27, 2013

Effective Dates: March 27, 2013 through August 23, 2013

Hearing Date: April 11, 2013

Public Instruction

EmR1303 — The state superintendent of public instruction hereby creates **ch. PI 47**, relating to the equivalency process for approving alternative models to evaluate educator practice.

The scope statement for this rule, SS 013-13, was published in Register No. 686, on February 14, 2013, and approved by Superintendent Evers, on February 25, 2013. Per the Dane County Circuit Court order issued in *Coyne, et al. v. Walker, et al.*, Case No. 11-CV-4573, the Department of Public Instruction is not required to get the Governor's approval for the statement of scope or this rule.

Finding of Emergency

The Department of Public Instruction finds that an emergency exists and that the attached rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of the facts constituting the emergency is:

Section 115.415 (3), Stats., requires the department to establish an equivalency process for reviewing alternative educator effectiveness systems. The statute also specifies criteria on which the process shall be based, including alignment to the 2011 Interstate Teacher Assessment and

Support Consortium and the 2008 Interstate School Leaders Licensure Consortium Educational Leadership Policy Standards. Additionally, the statute explains certain approval requirements.

The Educator Effectiveness System will be fully implemented and mandatory throughout the entire state by the 2014–15 school year. The pilot, which allows schools and districts to implement the system and inform modifications, will go into effect during the 2013–14 school year.

In order to have possible alternative models available for pilot use in 2013–14, there is an urgent need to get the equivalency process in place to approve other evaluation models. Districts intending on applying for an equivalency review of an alternative model must alert the department in writing by March 15, 2013, and January 15 each subsequent year. They must submit their application by April 15 of this year and March 15 each subsequent year in order to be approved.

Filed with LRB: March 4, 2013
Publication Date: March 8, 2013
Effective Dates: March 8, 2013 through August 4, 2013.

Safety and Professional Services *Professional Services, Chs. SPS 1—299*

EmR1302 — The Wisconsin Department of Safety and Professional Services hereby adopts an order to amend sections SPS 60.01; SPS 61.02 (1) (a), (2) (a), (3) (a), and (4) (a); 62.10 (title) and 62.10; 65.01; 65.02 (1); 65.07; and 65.12 (1) (h) and (i) 6.; and to create chapter SPS 205

relating to barbers and to barbering and cosmetology schools and instructors, and affecting small business.

This emergency rule was approved by the Governor on February 5, 2013.

The statement of scope for this rule, SS 063–12, was approved by the Governor on August 10, 2012, published in Register 680, on August 31, 2012, and approved by Secretary Dave Ross on October 15, 2012.

Finding of Emergency

The Department of Safety and Professional Services finds that an emergency exists within the state of Wisconsin and that adoption of an emergency rule is necessary for the immediate preservation of the public health, safety and welfare. A statement of the facts constituting the emergency is as follows.

On July 1, 2012, 2011 Wisconsin Act 190 transferred regulatory authority over barbers from the Barbering and Cosmetology Examining Board to the Department of Safety and Professional Services. Act 190 also changed the educational requirements for initial licensure of barbers, and the continuing–education requirements for renewal of barber licenses. Due to the transfer of authority and the changes in education requirements, immediate rulemaking by the Department is needed to implement corresponding rule changes prior to April 1, 2013, which is the renewal date mandated by section 440.08 (2) (a) of the Statutes for all barbering licenses.

Filed with LRB: February 14, 2013
Publication Date: February 14, 2013
Effective Dates: February 14, 2013 through July 13, 2013

Scope Statements

Administration

SS 028–13

This statement of scope was approved by the governor on March 15, 2013.

Rule No.

Chapter Adm 2.

Relating to

Facility use.

Rule Type

Emergency and permanent.

Finding/Nature of Emergency (Emergency Rule Only)

The legislature has vested management authority over various state buildings and grounds, including those of the Wisconsin State Capitol, in the Department of Administration since 1979. *See* Wis. Stats. s. 16.84 (1). Since 1979 the Department has permitted the use of these buildings and grounds for the free discussion of public questions and other purposes, so long as such uses did not interfere with the prime uses of these facilities, or otherwise infringe on interests of the state. *See* Wis. Stats. s. 16.845; Wis. Admin. Code s. Adm 2.04.

Beginning February 2011 groups of persons began to occupy the Wisconsin State Capitol building without permits. This included appropriating rooms and hallways in the Capitol building for purposes such as camping and storage of bulk supplies. To restore order to the building and to return the building to a point where the work of the Wisconsin State Legislature and the Supreme Court of Wisconsin could perform their constitutionally authorized functions without undue disruption, the Department expended funds in excess of \$7,400,000 for law enforcement personnel. The continuous occupation of the State Capitol was formally terminated in March of 2011.

Groups of persons continue to occupy rooms in the Wisconsin State Capitol building without permits, including the Capitol rotunda. These groups constitute an exception to the norm.

The Wisconsin State Capitol Police (WSCP) issue more than 400 permits annually for the use of various state facilities. Permits are issued for a variety of purposes, whether political, non-political, charitable or commercial. Permits are issued regardless of political party, affiliation or content.

Occupation of the Capitol rotunda and other areas has caused disruptions to properly permitted events and normal governmental activities, including, but not limited to, a Red Cross blood drive, a high school science exhibit, school group tours, general public tours, and legislative committee meetings and sessions. The State does not refuse permits for the lawful and safe use of State facilities by any group or groups. Neither can the State allow any group to occupy the Capitol in disregard of the rights of permit holders, public employees or visitors. It is imperative that the Department

continue to gain greater compliance from user groups in order to protect public safety and welfare.

Detailed Description of the Objective of the Proposed Rule

The objective of the proposed rule is to obtain greater compliance from user groups regarding facility use. This objective will be achieved by codifying historical Department practices and more clearly detailing certain provisions of the administrative code as informed by judicial interpretations.

This proposed rule-making may do the following:

- A. Codify the WSCP's historical practice of issuing permits to any person requesting such permits, rather than restrict permit requests to only a limited class of governmental officials, non-profit organizations, and the like.
- B. Codify limits on the discretion of the WSCP currently found in the Department publication entitled, "Wisconsin State Facilities Access Policy" (WSFAP).
- C. Codify the ability of the Department to publish reasonable, content-neutral limitations on uses appropriate for individual facilities, as the primary uses of buildings and facilities may differ.
- D. Adopt the historical interpretation of the WSCP, that persons may be cited for violations of Wis. Admin. Code s. Adm 2.14 (2) for conduct occurring in rooms reserved for use by the Legislature.
- E. Define terms such as "event" and "exhibit" and "room," or others as deemed appropriate to increase the clarity of the code.
- F. Codify the ability of the Department to waive the requirement that events or exhibits may only occur when a permit has been applied for 72 hours in advance, under a narrow set of circumstances.
- G. Further clarify the distinction between an exhibit and signs and the like which are incidental to events, as discussed by Dane County Circuit Court Judge Remmington.
- H. Further clarify that a person who creates a hazardous condition and refuses to cease doing so may be cited for such conduct under Wis. Admin. Code s. Adm 2.14 (2) (zd).
- I. Further clarify that even common materials can pose a hazard when used or deployed in a hazardous manner.
- J. Further clarify that materials deployed in a hazardous manner may be disposed of by WSCP.
- K. Further clarify the appropriate interpretation of Wis. Admin. Code s. Adm 2.14 (2) (v) by sub-dividing the text, as it was interpreted by Dane County Circuit Court Judge Genovese.

Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Policies relevant to the rule are existing policies as found in Wis. Stats. s. 16.84, s. 16.845, Wis. Admin. Code Ch. Adm 2, and the historical interpretations of the law as found in

WSFAP. Alternatives to codifying historical practice and further clarifying the existing administrative code include: a) terminating the use of the Wisconsin State Capitol as a designated public forum; b) restricting the manners of use of the designated public forum; or c) disposing of the permitting system in favor of a “voluntary permit system.”

Terminating the use of the Wisconsin State Capitol building as a designated public forum is an alternative. The United States Capitol building and a substantial number of other state capitol buildings are not public forums. Employing this alternative is not desirable since the vast majority of users have demonstrated that they are capable of holding events or displaying exhibits without undue interference with the functions of the Legislature or the Department. Similarly, restricting the manner of use (e.g. prohibiting rallies and the like) in the Wisconsin State Capitol building is an alternative that is not recommended for the same reasons.

Allowing the free use of the Capitol building without need for a permit is not practicable. There is no known legal or factual precedent for this type of arrangement in any other state capitol buildings. More importantly, the potential for conflict between user groups is too high to make such an approach a realistic or practical alternative, as demonstrated by the issues cited in the finding of emergency.

Detailed Explanation of Statutory Authority for the Rule, Including the Statutory Citation and Language

The Department is the managing authority of numerous state properties, and is required to, “Have charge of, operate and maintain... the state capitol building... and such other state properties as are designated by law.” Wis. Stats. s. 16.84 (1). “The department shall promulgate under ch. 227, and shall enforce or have enforced, rules of conduct for property leased or managed by the department.” Wis. Stats. s. 16.846 (1). Additionally, “the managing authority of any facility owned by the state... may permit its use for free discussion of public questions, or for civic, social or recreational activities.” Wis. Stats. sec. 16.845 (1). Further, “Whoever does or attempts an act for which a permit is required under this section without first obtaining a permit may be fined... or imprisoned... or both.”

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and Other Resources Necessary to Develop the Rule

Excluding time spent reviewing existing rules, historical information, and other sources in the preparation of this scope statement, we estimate that completion of the Final Draft of this emergency rule will require an additional 24 hours of staff time.

List with Description of all Entities that may be Affected by the Proposed Rule

This proposed emergency rule will clarify and protect the rights of all of the hundreds of user groups who obtain permits to use State facilities each year, as well as the Legislature, Supreme Court, the Attorney General’s Office, and the numerous citizens and school groups who visit or work in our State Capitol and other State facilities.

Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule

Existing federal regulations allow no permitted activities inside the U.S. Capitol building. Existing federal regulations

require permits of activities on the grounds of the U.S. Capitol whenever 25 or more persons are involved. Existing federal regulations concerning other facilities vary widely by the nature and location of the facility.

Anticipated Economic Impact of Implementing the Rule. Also, Please Note if the Rule Is Likely to Have an Economic Impact on Small Businesses

None.

Contact Person

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Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 024–13

This statement of scope was approved by the governor on March 13, 2013.

Rule No.

WM–11–13, chs. NR 1, 8, 10, 11, 12, 13, 15, and 19.

Relating to

Deer management, hunting, and implementation of the 2012 White-tailed Deer Trustee’s Report.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

These will be permanent rules.

A proposal contained in the 2013–15 state budget would direct the department to develop emergency rules allowing final implementation of provisions from the White-tailed Deer Trustee’s Report as soon as the 2014 deer season. If that proposal is enacted, the department will prepare a scope statement for emergency rules that will be similar to this scope statement.

Detailed Description of the Objective of the Proposed Rule

There has been dissatisfaction with various issues related to white-tailed deer management and hunting in Wisconsin. Gubernatorial candidate Scott Walker made a promise to appoint a “Deer Trustee” to review programs. In October of 2011 Dr. James C. Kroll, officially known as Wisconsin’s white-tailed deer trustee, entered into a contract with the State of Wisconsin to conduct an independent, objective and scientifically-based review of Wisconsin’s deer management practices. The White-tailed Deer Trustee’s report was released to the public in July, 2012.

The objective of these proposed rules is to work with sportsmen and sportswomen and other stakeholders in order to implement ideas and solutions from the Deer Trustee’s report to forge a new age for deer management.

Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Implementation of the Deer Trustee’s report will result in establishing significant new policies for deer management and hunting management compared to current rules. The primary policy alternatives being analyzed and considered are ones recommended in the report. Throughout this rulemaking

process, the department and its partners may evaluate other policy alternatives as they are identified.

The full report is located on the Wisconsin Department of Administration's website at: <http://www.doa.state.wi.us/section.asp?linkid=239&locid=0>

Ch. NR 1 related to Natural Resources Board Policies

Ch. NR 1 establishes a general framework for the department's wildlife and forestry management activities. The department is reviewing the report with this framework in mind and will recommend modifications that are consistent with the report. These rules are likely to shift away from deer population goals expressed in specific numbers of animals in favor of more general population goals. The basis for establishing deer population goals may also be modified by these rules. The department may revise what it considers to be tolerable levels of crop damage. The chapter currently addresses wildlife habitat management policy and those provisions may be strengthened or made more specific based on significant wildlife habitat related recommendations in the report. Development of a Young Forest Initiative Task Force may be addressed in this chapter as well as a Deer Management Assistance Program. Deer research priorities may also be a topic that is addressed in this policy-setting chapter. This chapter will be amended to maintain cross-reference citations with Ch. NR 10.

Ch. NR 8 related to License and Permit Procedures

Ch. NR 8 establishes standards and procedures for the automated license issuance system. These rules may recommend changes if they are necessary to improve efficiency or flexibility in the issuance of licenses, as needs arise during development of new automated licensing systems, and to maintain cross-reference citations.

Ch. NR 10 related to Game and Hunting

This chapter establishes most of the deer population management policy and practices and hunting regulations that are in place today. Ch. NR 10 establishes the Sex-Age-Kill model for estimating deer populations, deer population goals, and deer management units. These rules will replace the current population goals with a simplified goal statement to, "increase, stabilize, or decrease population density." These rules will establish a set of metrics to monitor progress towards the goal. These rules will reduce the number of deer management units and may combine farmland regions. The department will consider using county boundaries in place of the current unit boundaries.

These rules will simplify the regulatory process by setting antlerless harvest goals, regulations, and antlerless permit quotas on a three-to-five year cycle instead of annually under current rule. Historical demand for antlerless permits has not been a factor considered in quota setting in the past but would be a consideration under these rules. Through these rules, the department may eliminate free antlerless deer tags, currently referred to as herd control tags. These rules may establish a fee for antlerless tags which allow harvest of deer in its CWD management zones. Currently, some units have an unlimited number of antlerless deer permits available per hunter but, under this proposal, that may no longer be the case. Finally, these rules may establish antlerless deer permits and allow the establishment of quotas for public lands that are different from the permits and quotas that are established for privately owned lands in a management unit.

Simplifying the regulatory process and implementing a new population management goal system may require a variety of related hunting regulations changes. Changes may include the names for permits and the allowable use of various

deer permits. Back tags worn by hunters, deer carcass tags, and tagging requirements may be modified or eliminated where possible in order to simplify regulations or as opportunities arise during development of new automated licensing systems. Deer registration and transportation requirements may be relaxed and, in their stead, more customer-friendly harvest reporting procedures established. Black bear are another species for which in-person registration of harvested animals is required. These rules may modify bear harvest recording requirements if that is practical because deer and bear registration occur at the same locations and through the same process under current rules.

The department may recommend deer hunting season date modifications as a result of this rulemaking. While the report generally recommends that, "keeping seasons and bag limits consistent for longer periods of time would allow better assessment of management progress", it is challenging to discuss management system changes of this scale without considering season dates. For instance, it may be possible to simplify hunting regulations by eliminating a one-day closure of the archery season on the day before the traditional nine-day firearm season opens. The timing of other seasons for youth, disabled hunters, or other special seasons may also be evaluated. A move to more "passive" management of CWD, as recommended in the report, may also involve changes to deer hunting season dates.

This rulemaking will establish a Deer Management Assistance Program that will allow landowners and hunters to work together with the department to manage deer on a site-specific basis. The program will actively involve members of the public in the collection, analysis, and reporting of deer harvest information and improve management of the deer herd. The department may establish enrollment fees for participation in the program and that money will be credited back to implementation. This is a central recommendation of the report and recommends that the department establish: a) applicability to private and public lands, b) initial areas eligible to participate, c) administration of DMAP, d) funding, e) personnel and training, f) minimum property size to participate, g) fees, h) participation requirements, i) data collection requirements, j) registration of deer harvested on DMAP properties, k) data analysis and reporting, and l) assessment of DMAP effectiveness.

The department does not intend to modify regulations on the method of deer harvest at this time. However if an ACT of the legislature modifies a legal method of harvest while this rule package is being promulgated, and related rule changes are needed, this rule package would implement an ACT of the legislature. Notably, the department is aware that changes to the allowable uses of crossbows are being considered.

The trustee's report generally recommends a more passive approach than current department policy to the management of Chronic Wasting Disease. CWD-related rulemaking will be correspondingly limited in this proposal. However, regulation changes related to disease testing protocol, harvest permits and other hunting regulations may be identified and included if they are consistent with the report. The department establishes separate population goals for deer units that are in a CWD zone. Those goals and methods of population estimation will be modified or eliminated by these rules.

These rules may make other modifications to deer hunting regulations if they can be characterized as simplifications. These may include changes to the allowable hunting hours or allowable guns, ammunition, and other devices.

Chs. NR 11 and 15 related to Closed Areas and Game Refuges

Modifications to Chs. NR 11 and 15 will likely be needed to update cross references with Ch. NR 10 which will be modified significantly. The report did not recommend changes to these chapters of administrative code. Additional modifications to these chapters may be made if that assists with regulations simplification or improvement of hunting opportunities.

Ch. NR 12 related to Wildlife Damage and Nuisance Control

Modifications to Ch. NR 12 will likely be needed to update cross references with Ch. NR 10 which will be modified significantly. The report did not recommend significant structural changes to the damage program. Additional modifications to this chapter may be made if that assists with regulations simplification or improvement of hunting opportunities.

Ch. NR 13 related to Chippewa Treaty Rights Participants

Chapter NR 13 is intended to regulate off-reservation treaty rights of treaty rights participants recognized by *Lac Courte Oreilles Band v. Voigt*, 700 F. 2d 341 (7th Cir. 1983). Modifications to Ch. NR 13 will likely be needed to update numerous cross references with Ch. NR 10 which will be modified significantly. The report did not recommend changes to this chapter of administrative code.

Ch. NR 19 related to Miscellaneous Fur, Fish, Game and Outdoor Recreation

Modifications to Ch. NR 12 will likely be needed to update cross references with Ch. NR 10 which will be modified significantly. This section also contains regulations for feeding of wild animals and white-tailed deer related provisions which are not directly related to the report. Additional modifications to the chapter may be made if that assists with regulations simplification or improvement of hunting opportunities.

Ch. NR 45 related to the Use of Department Properties

Modifications to Ch. NR 45 will likely be needed to update cross references with Ch. NR 10 which will be modified significantly. The report did not recommend specific changes to this chapter of administrative code. However, many regulations in this chapter apply to deer hunters who are using department managed lands. Additional modifications to this chapter may be made if that assists with regulations simplification or improvement of hunting opportunities.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Department authority to conduct a variety of habitat and wildlife management activities is established in ss. 23.09 (2) (b), (d), and (h), (k) and (km), and (p), Stats. These sections authorize rulemaking related to deer and deer habitat management and: plans and priorities for conservation, game refuges, cooperative forest protection, research, resources inventory, and disease control. These sections authorize many of existing provisions of Ch. NR 1 (Natural Resources Board Policy), Ch. NR 11 (closed areas), Ch. NR 15 (game refuges), and Ch. NR 45 (use of department properties).

The primary authority to establish hunting regulations for deer and other species is established in s. 29.014, Stats. This section directs the department to establish and maintain open

and closed seasons, bag limits, size limits, rest days, and other conditions for the taking of game that conserves the game supply and provides citizens with good hunting opportunities. This section authorizes many of the existing provisions of Ch. NR 8 (license and permit procedures), Ch. NR 10 (game and hunting) and Ch. NR 19 (Miscellaneous Fur, Fish, Game and Outdoor Recreation).

The wildlife damage and nuisance program and rulemaking authority are established in s. 29.889 (2) (b), Stats., which directs the department to establish rules for program eligibility and funding, methods of abating damage, forms and procedures, prorating claims, and record keeping, audits and inspections. This is the authorizing legislation for much of Ch. NR 12 related to wildlife damage.

Rules related to Chippewa treaty rights (Ch. NR 13) are promulgated under general authority to establish hunting regulations in s. 29.014, Stats. and these rules are the department's interpretation of how laws must be interpreted or limited in order to comply with the general limitations on state regulatory authority expressed in *Lac Courte Oreilles v. State of Wisconsin*, 668 F. Supp. 1233 (W.D. Wis. 1987) and the specific limitations expressed in the regulatory phase of the *Voigt* litigation. (See e.g., *Lac Courte Oreilles v. State of Wisconsin*, 707 F. Supp. 1034 (W.D. Wis. 1989).

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The department estimates that rule and program development will require the equivalent of 5 full time staff people, or 10,400 hours. This estimate includes developing new deer management programs in addition to time spent specifically on rule promulgation.

List with Description of all Entities that may be Affected by the Proposed Rule

White-tailed deer affect nearly every Wisconsin resident in some way. Many of these effects are significant from a recreational, economic, and/or social perspective. A wide variety of groups and individuals will be interested in this proposed rule. Some groups include: Wisconsin Conservation Congress, Great Lakes Indian Fish and Wildlife Commission, Wis Farm Bureau Federation, WI Deer Hunters Assn., The Nature Conservancy, Whitetails Unlimited, WI Bowhunters Assn., WI County Forest Association, WI Woodland Owners Assn., Quality Deer Management Association, Rocky Mountain Elk Foundation, and the Sierra Club.

Groups registered to lobby the Wisconsin legislature within the last year, many registered specifically on these rules, include: WI Bear Hunter's Assoc., White-tails of WI, Safari Club International – WI Chapters, WI-Force, WI Wildlife Federation, National Rifle Assoc. of America, and the Assoc. of WI Snowmobile Clubs.

Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that is Intended to Address the Activities to be Regulated by the Proposed Rule

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

**Anticipated Economic Impact of Implementing the Rule
(Note if the Rule is Likely to Have a Significant
Economic Impact on Small Businesses)**

The department estimates that the economic impact of these rules will be moderate and, pursuant to 2011 Executive Order 50, will facilitate a 30 day period for comment on a draft economic impact analysis. The comment period will be held in late summer, 2013.

These rules will significantly modify rules that establish the department's habitat and deer harvest management strategies. Examples of the types of changes that could be made include; increased emphasis of habitat management on private land, use of different methods of measuring and estimating deer populations, and new ways to define and achieve desired deer populations or population trends. These rules will result in moderate revisions to regulations that apply to individual deer hunters. Examples of the types of changes that could be made include; eliminating or creating new deer management units, simplified harvest registration procedures, different deer hunting regulations on private versus public lands, and different uses and changes in the availability of antlerless deer harvest permits.

Deer population, harvest, and habitat management affect many entities in this state. A broad description of affected industries includes agriculture, forestry, tourism, and retail. Governments may be impacted by these rules because many do have programs to manage nuisance deer locally. Many non-profit groups are focused on natural resource conservation, wildlife resources, or deer in particular, and may be affected by these rules.

The department anticipates there may be moderate effects on the financial health of industries, governments, and groups. The department anticipates there will be moderate effects of these regulations for individual hunters and landowners. The longer comment period will allow 30 days for affected industries, governments, and groups to prepare comments that will be useful for preparation of the final economic impact analysis.

Affected entities are likely to base their evaluations of economic impact on their opinions of whether—or—not the rules will result in deer population increases, stabilization, or decreases. For instance, agriculture and forest-products interests may benefit from low deer populations and resulting low levels of crop and tree damage. The tourism and retail industries may benefit from high deer populations that result in greater enthusiasm and participation in deer hunting. This rule package will be designed to balance competing interests with a different approach than current rules.

It may be important to note that the department is statutorily prohibited from managing deer populations with regulations that require a hunter to first harvest an antlerless deer before harvesting a buck. The department also lacks rulemaking authority for certain deer hunting season frameworks. These changes to the department's regulatory authority result from recently enacted statutes and they will not be considered as part of an economic analysis prepared for these rules. While deer may have significant positive or negative impacts to different entities, removal of these harvest regulations likely moderates the economic impact of this rule package.

The department anticipates that there will be no or very few implementation and compliance costs for the affected entities. These rules will not establish reporting or compliance requirements or other regulations for small business. A possible outcome of these rules is the elimination of deer

registration stations at local businesses throughout the state. The department will summarize the value of registration fees paid by the department to businesses, and related impacts of this voluntary program, in the economic impact analysis.

This is not a complete estimate of economic impacts but, rather, a summary which indicates that these rules could have moderate economic effects and that a longer period to gather information from affected entities is warranted. The final economic analysis for these rules may include descriptions of specific impacts of deer and deer hunting in this state based on surveys and research done by the department, other state and federal agencies, and affected industries. However, even though significant research exists, the impact of wild deer on the environment and to people under various conditions cannot be anticipated with exact precision. The final analysis will also include significant narrative descriptions of anticipated economic impacts.

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Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 025-13

This statement of scope was approved by the governor on March 6, 2013.

Rule No.

WM-04-13, chs. NR 10, 11, 12, 15, 16, 18, and 45.

Relating to

The 2013 Bureau of Wildlife Management housekeeping rule amending.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

These will be permanent rules only.

Detailed Description of the Objective of the Proposed Rule

These rule changes are proposed to update administrative code language to correct inconsistencies, update outdated language, and provide clarification when appropriate. This rule package will amend regulations for hunting, deer carcass transportation, captive wildlife, possession of concealed handguns on DNR lands, and falconry found in Chs. NR 10, 11, 12, 15, 16, 18, and 45.

Specifically, these rules would;

1. Update administrative code language related to deer hunting seasons that are no longer in effect with the passage of 2011 ACT 50. This rule proposal makes changes of a housekeeping nature by striking rule language that is no longer in effect as a result of the ACT.
2. Remove protective status for collared doves and monk parrots. Such protections could prevent management and control activities for these exotic species. [ss. NR 10.04 and 12.05]
3. Simplify the process for licensed waste haulers and deer pick-up contractors to remove deer carcasses from the CWD zone to transport them directly to a

- landfill. Current rules allow DNR to grant an exception to the rule for licensed waste haulers, but incorporating this language directly into administrative code would make the process easier. [s. NR 10.105]
4. Expand hunting opportunities for disabled waterfowl hunters by easing restrictions on concealment requirements. Boats that can carry a person in a wheelchair may not be able to meet the concealment requirements for waterfowl hunting. [s. NR 10.12 (3)]
 5. Simplify the application process for conducting a Gun Deer Hunt for Hunters with Disabilities. Current application paperwork and procedures can cause undue hardship for hunt sponsors and a substantial amount of staff time is spent processing paperwork. [s. NR 10.40]
 6. Update language pertaining to possession of concealed handguns on DNR lands to conform to state law. [chs. NR 15 and 45].
 7. Relax fence standards for captive canines. Fence standards for canines could be more similar to captive bear fences rather than captive feline fences because canines are unlikely to climb fences. [ch. NR 16]
 8. Update the falconry bag limit to include one hen pheasant. Under current rules, any hen pheasant killed by a falcon must be left to lie, even though the falcon does not differentiate between hen and rooster pheasants. [ch. NR 18]
 9. Replace the word “Conibear” with the generic term “body gripping trap” to protect the Conibear® trademark. [s. NR 11.10]
 10. Simplify the Class B bear license requirements. [s. NR 12.15 (11) (b)]
 11. Simplify the regulations pertaining to entry into closed areas and waterfowl refuges to provide consistencies among properties. [chs. NR 11 and 15]
 12. The department may include other, minor, non-controversial rule proposals passed at the annual Spring Fish & Wildlife Hearings as advisory questions by the Conservation Congress.

Description of Existing Policies Relevant to the Rule and of New Policies Proposed to be Included in the Rule and an Analysis of Policy Alternatives; the History, Background and Justification for the Proposed Rule

All of the policies in this rule are generally consistent with past board policies of regulating fish and game harvest for conservation purposes.

Eurasian collared doves are currently a protected species in Wisconsin, and monk parrots are prohibited, but have become established in Chicago, and could naturally colonize in Wisconsin. These exotic species have a large reproductive output and an ability to adapt to a variety of habitats. Under current rules, Eurasian collared doves cannot be harvested, and permission from the DNR is necessary before destroying monk parrots or their nests. By classifying Eurasian collared doves as unprotected, and monk parrots as birds causing depredation, and thereby allowing their harvest by the public, the necessity of future management action for these two species could be reduced.

Under current rules, deer waste from the CWD management zone may only be disposed at a landfill within the CWD management zone unless permission to move the waste to a landfill outside of the CWD management zone is

granted by the department. This change would allow private sector waste haulers to negotiate disposal contracts with landfills outside of the CWD management zone, which could allow private sector business more cost effective methods for disposing of deer waste.

Waterfowl hunters must be ‘concealed’ in emergent vegetation as defined in NR 10.001(20) unless hunting one of the few lakes that allow open water hunting. Accessible boats may not be able to meet the concealment requirements because they may require deeper water to operate and it is therefore difficult to find emergent vegetation capable of meeting the definition of concealment. People with disabilities may also be physically unable to get into a smaller-sized boat that is capable of meeting the concealment requirement. This rule will make waterfowl hunting opportunities for people with disabilities more equitable.

The current application process for sponsoring a Gun Deer Hunt for People With Disabilities on private land is cumbersome. Streamlining the process will help to reduce costs associated with the application procedure for private sponsors as well as reduce the department’s costs of administering the hunt.

State law (2011 Acts 35 and 51) pertaining to the possession of concealed handguns and firearms transportation changed in 2011 and this proposal will update administrative code to reflect these changes.

Fence standards for captive wolf, wolf-dog hybrids, and coyote are currently the same as for cougar, bobcat, and lynx (i.e., 10 feet tall with an additional 4 feet at the top slanted in at a 30–45° angle). Canines are unlikely to climb fences, so this rule seeks to reduce fence standards for captive canines to reflect their likely behavior. The new fence standards that would be in place under this rule would be the same as current rules for captive bear (i.e., 8 feet tall with an additional 3 feet at the top slanted inward at a 30–45° angle).

Under current rules, a falconer whose raptor kills a hen pheasant must leave the dead pheasant where it lies. This rule change will allow falconers to harvest and legally possess a hen pheasant taken by falconry methods outside the regular pheasant hunting season and hen/rooster stocked public hunting grounds. This will reduce the waste of a game bird, and will also make Wisconsin’s rules for falconry more similar to rules in surrounding state.

The holder of the Conibear® trademark contacted the WI Department of Justice requesting that the DNR remove the term “Conibear” from administrative code, and replace it with a more generic term, such as “body-gripping trap” to protect their trademark name. Additionally, this rule may slightly expand the allowable sizes of colony traps used for muskrats so that they can be more easily constructed with the materials that are commonly available at hardware stores.

In 2011, a new law changed the requirements associated with a Class B bear license; one of the changes was that youth under 16 no longer need a Class B bear license to perform the activities authorized by a Class B bear license. This rule will help to simplify the administrative code associated with Class B bear licenses, and bring the administrative code in line with state law.

A number of closed areas and refuges are established to protect migratory birds during the hunting season. These refuges provide safe resting areas for migrating waterfowl and a result is that birds may remain in an area for a longer period of time during the hunting season and provide hunting opportunities around the refuges. However, many of regulations for refuges are out-of-date. Modifications to refuge-related rules could include clarifying that entry to

refuges is not allowed during a split in the duck hunting season. For the first time in 2012, to accommodate people who prefer to hunt late in the fall season, the duck season will be closed for five days in November in the north duck zone. The season will re-open after those five days and continue five days later into November than would otherwise be allowed under the federal framework. Some refuges could be open to the public during the five days when the waterfowl season is closed, potentially resulting in disturbances to waterfowl that will have a negative effect on hunting when the season reopens.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

The chapter on wild animals and plants, in s. 29.014, Stats., “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to make changes related to taking of unprotected species, movement of deer waste, concealment of waterfowl hunters, the administration of deer hunts, taking of hen pheasants by falconers, legal trap types, and waterfowl hunting hours and season dates.

The establishment of game refuges is authorized in s. 23.09 (2) (b), Stats., relating to the department’s ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

The establishment of rules for the housing of captive wildlife is authorized in s. 169.39 (3), Stats., which directs the department to promulgate rules pertaining to the specifications for enclosures.

State law (2011 Acts 35 and 51) relating to the possession of concealed handguns and transporting firearms changed in 2011 and this proposal will update administrative code to reflect these changes.

Under 2011 ACT 50, the department is prohibited from establishing regular firearm deer seasons that occur earlier than the Saturday before the Thanksgiving holiday. This rule proposal makes changes of a housekeeping nature by striking rule language that is no longer in effect as a result of the ACT.

Estimate of the Amount of Time that State Employees Will Spend to Develop the Rule and of Other Resources Necessary to Develop the Rule

Approximately 400 hours will be needed by the department prior to and following the hearings.

List with Description of all Entities that may be Impacted by the Rule

Hunters, trappers, recreational users of DNR lands, and holders of captive wildlife permits are the principal groups that will be affected by this rulemaking. Any impacts will be very minor and no controversy is anticipated.

Summary and Preliminary Comparison of any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Rule

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

These rules, and the legislation which grants the department rule making authority, will have no effect on the private sector or small businesses. These rules are applicable to individual sportspersons and impose no compliance or reporting requirements for small business.

This scope statement includes a proposal that would simplify the process by which private sector waste haulers are able to dispose of deer waste from the CWD Management Zone. This proposal is expected to reduce costs for private business because they will be able to find local, cost effective methods for disposal rather than transporting waste to one of the two landfills within the CWD management zone which accept deer waste. The department currently has authority to make exceptions on a case-by-case basis and has granted exemptions, so actual economic benefits will be minor.

The proposal to relax fence standards would replace more restrictive fence standards that are set to go into effect on January 1, 2014. By superseding the more restrictive fence standards, permit holders will not be required to upgrade existing fences to a higher standard. However, the number of people who possess captive canines such as wolf-dog hybrids is fewer than two dozen and no statewide economic impacts are expected. The captive breeding of wolf-dog hybrids is prohibited in Wisconsin so there should be no impact on wolf-dog hybrid breeders.

Other proposed rule changes are not expected to significantly influence the spending activities or hunting and trapping activity of hunters, trappers, dog trainers, or other outdoor enthusiasts. Correspondingly, no related economic impacts are anticipated.

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Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 026-13

This statement of scope was approved by the governor on March 6, 2013.

Rule No.

WM-10-13, ch. NR 19.

Relating to

Wildlife rehabilitation.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

These will be permanent rules only.

Detailed Description of the Objective of the Proposed Rule

This subchapter was adopted in 2004 to establish consistent standards for the rehabilitation of wildlife, ensure that all persons engaged in wildlife rehabilitation are qualified, and to ensure that rehabilitators provide humane care and housing for wildlife being rehabilitated. These Proposed revisions will clarify existing rules and establish

new requirements on people licensed to rehabilitate wild animals based on what the department has learned after nearly ten years of experience administering the subchapter.

Description of the Existing policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Wildlife rehabilitation is the act of providing temporary care for injured, sick or orphaned wildlife with the goal of releasing them back into the wild. Animals released back into the wild must have the ability to recognize and find appropriate foods, socialize with members of their own species and exhibit normal behaviors such as fear of humans and predator avoidance.

This proposal will investigate clarifying the roles of care providers who assist with the rehabilitation of wildlife under the authority of the basic and/or advanced licensee's license. The goal is to increase the amount of supervision of assistants who are not licensed and a resulting increase in the quality of animal care. This may be accomplished by creating definitions for the terms, "volunteer", "subpermittee", "intern", or "care-provider". The proposal will establish a clear prohibition of rehabilitation by volunteers working under a license holder's authority with specific exemptions.

The addition of care providers (which includes interns) will allow both basic and advanced licensees to have individuals assist with basic wildlife rehabilitation activities. By allowing care providers, licensees can have qualified individuals assist with rehabilitation care in case of emergencies, busy times of the year, or when the licensee is not available. Complete authority and responsibility will remain with the licensee and all care providers can only assist with rehabilitation activities at the licensee's facility.

The addition of subpermittees allow advanced licensees the ability to have qualified individuals assisting with rehabilitation activities either on-site or off-site of the licensee's facility. As part of the proposed rule change, subpermittees will be subject to the same restrictions as basic licensees. These restrictions involve the types of animals that can be rehabilitated (those that are dangerous or difficult to handle), as well as euthanasia requirements.

These rules will establish requirements for basic and advanced licensees to add new species to their license authority.

These rules will require wildlife rehabilitation license applicants to indicate prior experience in wildlife rehabilitation and/or animal care, certify that they have read and understand a code of ethics for wildlife rehabilitators, and provide documentation of compliance with local ordinances.

These rules will establish continuing education requirements which must be met before renewing basic or advanced licenses, and will add that taking and passing an exam is required to apply for an advanced license.

This proposal will incorporate by reference the Minimum Standards for Wildlife Rehabilitation (or equivalent enclosures) for the size and construction of enclosures used to contain wild animals established by the National Wildlife Rehabilitation Association and the International Wildlife Rehabilitation Council. Additionally, applicants for wildlife rehabilitation licenses will need to provide a complete caging/enclosure report with pictures of their enclosures when their rehabilitation license applications are submitted.

This proposal will establish who can perform euthanasia on wild animals. Euthanasia may be performed by the advanced

licensee, a basic licensee under the direct supervision of the sponsoring advanced licensee or their consulting veterinarian. The proposal also states that a licensed veterinarian who is not consulting a licensee can perform euthanasia.

This proposal will establish that, for purposes of responding to an oil spill or other disaster, a person licensed to rehabilitate wildlife in another state may temporarily assist with rehabilitation in this state.

This proposal will establish requirements for wildlife rehabilitation license applicants from other states and provinces who are requesting either a basic or advanced wildlife rehabilitation license.

The proposal prohibits by rule the rehabilitation of skunks because of threats to public and animal health of rabies in that species. Under the proposal, the rehabilitation of deer is also prohibited by rule in areas where CWD has been identified.

Current statutes and rule require rehabilitators to keep records of animals received, the condition of the animals and the disposition of each animal. For certain species, quarterly reporting to the department is required. Through this proposal, the department may modify reporting requirements.

Wildlife rehabilitation experience is required of an advanced license holder who wishes to sponsor basic license holders. This proposal requires that the advanced license holder be able to document or otherwise prove to the department that they have experience rehabilitating the species being considered and be approved by the department and the existing wildlife rehabilitation advisory committee. Potential sponsors will be reviewed by the Wildlife Rehabilitation Advisory Committee.

The proposal may expand the role of the existing Wildlife Rehabilitation Advisory Committee. The committee would continue to be focused on issues related to the wildlife rehabilitation but might also advise the department on other issues related to privately held captive wild animals.

This proposal will update cross-references and correct other errors that may be discovered during rule drafting.

This proposal may make other non-controversial updates that are identified during the rule drafting and review process.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

The department's authority to authorize and regulate the rehabilitation of wild animals is established in s. 169.24, Stats. The department is directed by s. 169.24 (2), Stats., to, "promulgate rules to establish the qualifications required to obtain a rehabilitation license, the types of activities authorized by a rehabilitation license and the standards, limitations, and requirements for rehabilitation licenses."

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

200 hours will be necessary to develop these rules.

List with Description of all Entities that may be Affected by the Proposed Rule

Holders of licenses to rehabilitate injured wild animals and their subpermittees, care providers, and volunteers are the primary people who will be impacted by these rules. Wildlife rehabilitation is typically performed by non-profit organizations or individuals and volunteers who are not reimbursed by government funding or by fees paid for services.

Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule

Federal regulations allow states to manage the wildlife resources located within their boundaries provided they do not conflict with regulations established in the Federal Register. Under international treaty and Federal law, the possession of migratory birds is also regulated by the United States Fish & Wildlife Service. Additionally, federal regulations do apply to bald eagles and federally listed endangered or threatened species. None of these rule changes violate or conflict with the provisions established in the Federal Code of Regulations.

Anticipated Economic impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

Wildlife rehabilitation is typically performed by non-profit organizations or individuals who are not reimbursed by government funding or by fees paid for services. These rules, and the legislation which grants the department rule making authority, will have no economic effect on small businesses. These rules are applicable to wildlife rehabilitators and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

Contact Person

Scott Loomans, Wildlife Regulation Policy Specialist, (608)267-2452, scott.loomans@wisconsin.gov.

Natural Resources

Fish, Game, etc., Chs. NR 1—

SS 027-13

This statement of scope was approved by the governor on March 6, 2013.

Rule No.

WM-06-13, chs. NR 8, 10, 11, 15, and 18.

Relating to

Migratory bird hunting regulations.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

These will be permanent rules.

Detailed Description of the Objective of the Proposed Rule

This proposal will establish a general framework of season dates, bag limits, and conditions for taking migratory game birds by hunting or falconry. Primary objectives of the rule will be to reduce the amount of migratory bird-related emergency rule making that is needed each year, to simplify regulations, codify provisions already in effect by emergency rule, and repeal a sunset provision.

Description of the Existing policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

In the past, the department has annually promulgated emergency and permanent rules establishing the same year's migratory bird hunting regulations. The emergency rule is necessary because migratory game bird hunting is regulated by the United States Fish & Wildlife Service which offers a final season framework to Wisconsin on approximately August 1 each year. This timeframe does not allow for promulgation of a permanent rule prior to the hunting season. As part of the federal regulation of migratory game bird hunting, groups of states are organized into councils by migratory flyways to work together on the management and regulation of migratory game birds. Wisconsin is part of the Mississippi Flyway Council (MFC) which consists of 14 states and 3 Canadian provinces and state rules are subject to flyway council management plans and agreements. The department has promulgated permanent rules in the past so that information related to zones, tagging requirements for geese, and other regulations remain current. However, season dates and bag limits established in the Wis. Admin. Code reflect the previous year's season framework and are not useful, current information.

Through this rulemaking process, the department will evaluate ways to establish more general descriptions of the migratory bird hunting season in Wis. Admin. Code. For example, new rule language might start the duck season on the "last Saturday in September" instead of a specific date. Emergency rulemaking will still be required of the department as the federal frameworks are established each year, but a result would be less rulemaking overall.

Through this rulemaking process, the department will investigate what authority it has or which can be established to modify season dates or bag limits through an order of the department secretary instead of by rule. The ability to modify regulations, specifically when necessary to remain in compliance with the federal season framework, could reduce the amount of emergency rulemaking that is needed. A rule of this nature could establish sideboards requiring the department to take full advantage of the federal framework.

The department will also recommend ways to simplify Canada goose hunting regulations. Current rules require tagging geese that are harvested in the Horicon Zone but a simpler process of recording harvest may be possible. Additionally, the department will consider eliminating the permit application deadline for Horicon zone hunters and simply issue harvest permits while recognizing the flyway management and federal protections against overharvest of the Mississippi Valley Population. The department will also consider reducing the size of the Horicon zone which would result in expanded hunting opportunities in areas no longer in that zone.

The department will consider other simplifications to migratory bird hunting regulations that may be identified during this rulemaking process.

Through this rulemaking, the department may suggest revisions to the existing prohibition and exceptions for open-water hunting. Most waterfowl hunters are required to be partially or entirely concealed in emergent vegetation while hunting from a boat, blind or similar device on state water. This requirement preserves open water areas as safe resting areas for migrating waterfowl. By emergency rule, the department has established an exception for disabled permit holders and their assistants. This would establish the same exception by permanent rule in Wis. Admin. Code.

Additional revisions of a housekeeping nature could be made. The department will consider other suggested ways to modify the provision, including advisory resolutions offered by the Wisconsin Conservation Congress.

This proposal would eliminate the sunset of 1:00 p.m. closure of migratory bird hunting at two wildlife management areas – Lake Mills Wildlife Area, Jefferson County, and Mead Wildlife Management Area, Wood, Marathon, and Portage Counties. Similar regulations in other states have been shown to provide good hunting across an entire property rather than just near refuges and hold ducks in an area for a longer period of time. This regulation sunsets after 3 years but there continues to be public support so the rule would be reauthorized under this proposal. At Lake Mills, mourning dove hunting hours also close at 1:00 p.m. The department may ask hunters if they would like this or similar opportunities at additional properties which are managed for mourning dove hunting.

These rules may modify the regulations of people who practice falconry for pursuing migratory game birds if necessary changes are identified during the rulemaking process.

The department may include other, minor, non-controversial rule proposals passed at the annual Spring Fish & Wildlife Hearings as advisory questions by the Conservation Congress.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

The chapter on wild animals and plants, in s. 29.014, Stats., “rule making for this chapter”, establishes that the department shall maintain open and closed seasons for fish and game and any limits, rest days, and conditions for taking fish and game. This grant of rule-making authority allows the department to promulgate rules related to migratory game bird hunting.

Special regulations on the taking of certain wild animals are authorized under s. 29.192, Stats., including specific language that authorizes rules related to Canada goose hunting.

The establishment of migratory game bird refuges is authorized in s. 23.09 (2) (b), Stats., relating to the department’s ability to designate locations reasonably necessary for the purpose of providing safe retreats in which birds may rest and replenish adjacent hunting grounds.

Wisconsin’s boundary waters with other states are popular waterfowl hunting locations. Specific authority to regulate hunting in and on all interstate boundary waters and outlying waters is established in s. 29.041, Stats.

Sections 23.11 and 29.014, Stats., allow for the protection of natural resources, establish general department powers on lands it manages including migratory bird refuges, and authority to establish hunting and trapping regulations on department managed lands.

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

Approximately 400 hours will be needed by the department prior to and following the hearings.

List with Description of all Entities that may be Affected by the Proposed Rule

These rules will impact migratory game bird hunters, primarily those pursuing ducks and geese.

Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule

Migratory game bird hunting is regulated by the United States Fish & Wildlife Service (USFWS), in 50 CFR part 20. Under international treaty and Federal law, migratory game bird seasons are closed unless opened annually through the USFWS regulations process. As part of the federal rule process, the service annually evaluates migratory game bird populations and breeding habitat in cooperation with state provincial agencies and the Canadian Wildlife Service. After considering recommendations from the flyway councils of states and the guidance of cooperatively developed harvest strategies, the USFWS establishes annual frameworks within flyway or bird populations regions. States can then establish hunting seasons within the sideboards for each species and region. As a result, the hunting seasons of neighboring states are similar to Wisconsin migratory game bird hunting regulations because they are subject to the same federal frameworks.

Locally produced giant Canada geese are now a considerable portion of the harvest in states that also harvest Mississippi Valley Population geese that nest in Northern Ontario. The Mississippi Flyway Council has tested the use of a standard season framework for 5 years, ending in 2011. Season lengths and bag limits for each MVP harvest state remained unchanged. In 2012, the MFC conducted an evaluation of harvest impacts of these stable regulations and established a framework for future seasons. It was agreed within the MFC that states harvesting MVP Canada geese could take small steps toward liberalization while impacts are cooperatively monitored.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

No economic impacts are anticipated. The hunting season frameworks proposed in this rule will be comparable to those in place during the previous season. These rules are applicable to individual hunters and impose no compliance or reporting requirements for small business, nor are any design or operational standards contained in the rule.

Contact Person

Scott Loomans, scott.loomans@wisconsin.gov, (608)267-2452, or Kent Van Horn, kent.vanhorn@wisconsin.gov, (608) 266-8841.

Safety and Professional Services — Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors

SS 021-13

This statement of scope was approved by the governor on March 6, 2013.

Rule No.

Chapter A-E 13.

Relating to

Continuing Education (CE).

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

NA.

Detailed Description of the Objective of the Proposed Rule

The objective of this proposed rule-making is to clarify various provisions of ch. A–E 13, Wis. Admin. Code, which sets forth minimum standards for continuing education for professional engineers and to resolve inconsistencies between the rules in that chapter. In particular, this proposal is intended to revise the rules so that newly registered comity applicants are treated consistently with newly registered Wisconsin engineers with respect to continuing education. This proposal may include amendments to other A–E Code chapters as necessary based on the changes to ch. A–E 13.

It is also intended to clarify the rules for a person who has retired from the profession and is seeking a waiver from the continuing education requirements. It will revise the rules to state retirees may not perform or provide professional engineering services nor receive remuneration to be eligible for the waiver.

Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Policies relevant to ch. A–E 13, Wis. Admin. Code: All registered professional engineers, like any other professional, should adhere to minimum standards of practice, where such standards have been promulgated by engineer–practitioners knowledgeable in both the practice and its governing law. Minimum professional standards must be easily understood by practitioners. They must also be consistent with each other, the statutes, and other related law; and should reflect current practices of the profession. These policies remain in effect. No new alternative policies are involved, making an analysis of policy alternatives unnecessary.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Examining Boards are generally empowered by the legislature pursuant to ss. 15.08 (5) (b) and 227.11, Stats., to promulgate rules that govern their profession. The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors (Board) are specifically authorized by s. 443.015, Stats., to establish rules governing continuing education requirements. Therefore the Board is authorized generally and specifically to promulgate the proposed rules. See sections 15.08 (5) (b), 227.11 (2) (a), and 443.015 (2), Stats.

Estimate of Amount of Time that State Employees will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

100 hours

List with Description of all Entities that may be Affected by the Proposed rule

Registered professional engineers and individuals and entities using their services.

Summary and Preliminary Comparison with any Existing or Proposed Federal Regulation that Is**Intended to Address the Activities to be Regulated by the Proposed Rule**

No federal laws regulate the practice of professional engineering as it relates to the activities regulated by the rules proposed herein.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

None.

Contact Person

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Shancethea.L Leatherwood@Wisconsin.gov.

Safety and Professional Services**Professional Services, Chs. SPS 1—299**

SS 022–13

This statement of scope was approved by the governor on March 6, 2013.

Rule No.

Sections SPS 1.08 (2), 2.10 (1), 8.03 (3), and ch. SPS 3 Appendix 1.

Relating to

Hearings, injunctions, and warnings.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

NA.

Detailed Description of the Objective of the Proposed Rule

The objective of the proposed rule is to address an outdated process and fix typographical errors.

Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

Sections SPS 1.08 (2) and 2.10 (1) currently provide for the designation of the presiding officer to be employed by the Department unless the credentialing authority designates otherwise. These sections also indicate the administrative law judge shall be an attorney in the department designated by department general counsel, an employee borrowed from another agency or a person employed as a special project or limited term employee. The Department of Safety and Professional Services no longer has designated administrative law judges within the Department and contracts with Department of Administration, Division of Hearing and Appeals to preside over hearings. The proposed policy is to have the presiding officer of Class 1 and Class 2 hearings be an administrative law judge employed by the Department of Administration.

The rule also proposes to correct the typographical errors in ch. SPS 3 Appendix and s. SPS 8.03 (3).

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 440.03(1), Wis. Stats. The department may promulgate rules defining uniform procedures to be used by the department, the real estate appraisers board, and all

examining boards and affiliated credentialing boards, attached to the department or an examining board, for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.

Section 440.205, Wis. Stats. The department shall promulgate rules establishing uniform procedures for the issuance and use of administrative warnings.

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

20 hours

List with Description of all Entities that may be Affected by the Proposed Rule

Credential holders.

Summary and Preliminary Comparison with any Existing or proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule

None.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

None.

Contact Person

Sharon Henes, (608) 261-2377.

Safety and Professional Services

Professional Services, Chs. SPS 1—299

SS 023-13

This statement of scope was approved by the governor on February 18, 2013.

Rule No.

Chapters SPS 192 to 196, 100 to 105, and 110 to 116.

Relating to

Mixed martial arts, amateur boxing, and professional boxing.

Rule Type

Permanent.

Finding/Nature of Emergency (Emergency Rule Only)

Not applicable.

Detailed Description of the Objective of the Proposed Rule

The objective of the proposed rule changes is to clarify inconsistencies, delete any unnecessary requirements, add any missing requirements, and improve various administrative elements — primarily for mixed martial arts fighting contests — and to repeal all the rules for amateur boxing. However, some of the improvements that the Department expects to develop for mixed martial arts may be similarly helpful for the Department's requirements for professional boxing. In addition, these rule changes may include combining the current requirements for mixed martial arts fighting contests and for professional boxing contests into

fewer and simpler chapters than are currently used. Consequently, the objectives of this rulemaking may be incorporated into more than one rulemaking project.

Description of the Existing Policies Relevant to the Rule, New Policies Proposed to be Included in the Rule, and an Analysis of Policy Alternatives

The existing policies for mixed martial arts fighting contests, and the corresponding rules in chapters SPS 192 to 196, have been in place only since April 2011 – and were developed and implemented very quickly in response to requirements and corresponding deadlines in 2009 Wisconsin Act 111. Although the rules in these chapters established a workable initial framework for this new program, experience in the program since its onset has identified several inconsistencies and unnecessary requirements in these rules, several missing requirements, and several potential improvements for the administrative elements, which should be helpful to the various stakeholders.

The existing rules for amateur boxing, in chapters SPS 100 to 105, have been irrelevant since enactment of 2003 Wisconsin Act 285, which (1) reduced the Department's role in boxing to addressing only professional boxing and (2) required amateur boxing contests to instead be sanctioned by and conducted under the rules of the national governing body for amateur boxing that is recognized by the U.S. Olympic Committee under 36 USC 220521.

Detailed Explanation of Statutory Authority for the Rule (Including the Statutory Citation and Language)

Section 227.11 (2) (a) of the Statutes authorizes the Department to “promulgate rules interpreting the provisions of any statute enforced or administered” by the Department.

Section 440.03 (1) authorizes the Department to “promulgate rules defining uniform rules to be used by the department . . . for receiving, filing and investigating complaints, for commencing disciplinary proceedings and for conducting hearings.”

Section 440.03 (7m) authorizes the Department to “promulgate rules that establish procedures for submitting an application for a credential or credential renewal by electronic transmission.”

Section 444.02 (2) authorizes the Department to “issue, and for cause limit, suspend, or revoke, a license to conduct professional contests or amateur mixed martial arts fighting contests to any promoter or incorporated club formed as provided in [the] chapter” and to “reprimand a promoter or club for violating this chapter or any rule of the department.”

Under section 444.035, the Department must “by rule require a promoter or club conducting a professional contest or amateur mixed martial arts fighting contest to post a bond or other surety in a reasonable amount determined by the department to ensure payment of the promoter's or club's expenses in conducting the contest, including payments to contestants and to the department.”

Section 444.04 authorizes the Department to “limit, suspend, revoke, or assess a forfeiture to the promoter or club” for failure to furnish an accurate written report to the Department after a fighting contest, showing the number of tickets sold, the amount of the gross proceeds, and all other information the Department requires by rule to be included in the report.

Section 444.06 requires the Department to “appoint official inspectors” for mixed martial arts fighting contests and states that “at least one inspector shall be present at all professional contests and all amateur mixed martial arts

fighting contests and see that the rules are strictly observed,” and authorizes the Department to require a promoter or club to pay for inspectors.

Section 444.095 (3) requires the Department to “promulgate rules that establish all of the following with respect to mixed martial arts fighting contests: (a) Qualifications and fees for licensure of referees and judges for mixed martial arts fighting contests. (b) Requirements for regular health examinations of mixed martial arts fighting contestants, including all of the following: 1. Annual physical examinations by physicians and annual eye examinations by physicians who are board-certified ophthalmologists. 2. Annual screening for HIV, hepatitis B, and hepatitis C. 3. For female contestants, pregnancy tests before contests. (c) Policies prohibiting contestants from using drugs, including anabolic steroids, and mandating drug testing of contestants.”

Section 444.095 (4) requires conducting mixed martial arts fighting contests “under the Association of Boxing Commissions’ uniform rules of mixed martial arts,” and the Department consequently includes these rules in chapter SPS 195.

Section 444.11 authorizes the Department to “grant licenses . . . to matchmakers, managers, referees . . . mixed martial arts fighters, seconds, and trainers in professional contests and amateur mixed martial arts fighting contests.”

Section 444.19 authorizes the Department to “by rule adjust the fees under [the] chapter to account for changes in the department’s costs in administering and enforcing [the] chapter.”

Estimate of Amount of Time that State Employees Will Spend Developing the Rule and of Other Resources Necessary to Develop the Rule

The Department estimates approximately 400 hours will be needed to perform the review and develop the needed rule changes. This time includes meeting with stakeholders, drafting the rule changes and processing the changes through public hearings, legislative review, and adoption. The Department will assign existing staff to perform the review

and develop the rule changes, and no other resources will be needed.

List with Description of all Entities that may be Affected by the Proposed Rule

Entities engaged in promoting and conducting mixed martial arts contests, such as promoters, clubs, matchmakers, contestants, judges, referees, ringside physicians, seconds, inspectors and timekeepers.

Summary and Preliminary Comparison with any Existing or proposed Federal Regulation that Is Intended to Address the Activities to be Regulated by the Proposed Rule

Chapter 89 of Title 15 of the United States Code regulates the safety of professional boxing. Under the definition of “mixed martial arts” in chapter SPS 192 and the definition of “mixed martial arts fighting” in chapter 444 of the Statutes, techniques from boxing are allowed in mixed martial arts fighting – including “striking an opponent’s head with the intent to cause unconsciousness or inflict damage.” Consequently, some of the requirements in 15 USC chapter 89 may bear at least indirectly on the mixed martial arts fighting that is addressed by chapters SPS 192 to 196, such as the requirement in 15 USC 6305 for contestants to register with a state boxing commission and obtain a nationwide personal identification number from an entity certified by the Association of Boxing Commissions. This rule project may include codifying the Department’s current requirement that mixed martial arts contestants obtain a nationwide mixed martial arts personal identification number prior to participating in a fighting contest.

Anticipated Economic Impact of Implementing the Rule (Note if the Rule is Likely to Have a Significant Economic Impact on Small Businesses)

None to minimal.

Contact Person

Sam Rockweiler, at P.O. Box 8935, Madison, WI 53708–8935; or at sam.rockweiler@wi.gov; or at telephone (608) 266–0797 or Contact Through Relay.

Submittal of Proposed Rules to Legislative Council Clearinghouse

*Please check the Bulletin of Proceedings – Administrative Rules
for further information on a particular rule.*

Natural Resources

*Fish, Game, etc., Chs. 1—
Environmental Protection—General, Chs. 100—
Environmental Protection—Water
Regulation, Chs. 300—
Environmental Protection—Air Pollution
Control, Chs. 400—
Environmental Protection—Solid Waste
Management, Chs. 500—
Environmental Protection—Hazardous Waste
Management, Chs. 600—
Environmental Protection—Water Supply, Chs. 800—
CR 13-022*

(DNR # OE-46-10)

On March 14, 2013, the Department of Natural Resources submitted a proposed rule to the Legislative Council Rules Clearinghouse.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No 657 on September 14, 2010, was sent to LRB prior to June 8, 2011, the effective date of Act 21.

Analysis

This proposed rule-making order revises chs. NR 2, 19, 51, 108, 110, 126, 134, 150, 166, 101, 300, 305, 310, 327, 345, 410, 512, 670, and 820 and relates to environmental analysis and review procedures under the Wisconsin Environmental Policy Act.

Agency Procedure for Promulgation

Public hearings will be held on April 16, 17, and 18, 2013.

Contact Person

Save Siebert, Bureau of Energy, Transportation and Environmental Analysis, (608) 264-8991; Attorney Edwina Kavanaugh, Bureau of Legal Services, (608) 266-1959; Linda Haddix, Bureau of Legal Services, (608) 266-1959.

Natural Resources

*Fish, Game, etc., Chs. 1—
CR 13-023*

(DNR # FR-24-11)

The Wisconsin Department of Natural Resources announces that it referred the following proposed rule to the Wisconsin Legislative Council Rules Clearinghouse, on March 15, 2013.

The scope statement for this rule, SS 037-11 was approved by the Governor on November 3, 2011, published in Register

671 on November 30, 2011, and was approved by the Natural Resources Board on December 14, 2011.

Analysis

This rule revises Chapter NR 1, relating to contracting with cooperating foresters and private contractors for regeneration services.

Agency Procedure for Promulgation

The department will hold a public hearing on this rule on April 26, 2013.

Contact Person

Tim Beyer, forester, (920) 892-8756, Tim.beyer@wisconsin.gov; Linda Haddix, DNR rule coordinator, (608) 266-1959, Linda.haddix@wisconsin.gov.

Safety and Professional Services — Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors CR 13-020

On March 4, 2013, the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors submitted a proposed rule-making order to the Wisconsin Legislative Council Rules Clearinghouse.

This rule is not subject to 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule was published in Register No. 612 on December 31, 2006, and was sent to the LRB prior to June 8, 2011 (the effective date of 2011 Wisconsin Act 21).

Analysis

Statutory Authority: Sections 15.08 (5) (b), 227.11 (2) (a), and 443.17, Stats.

This proposed rule-making order revises ss. A-E 2.02 (7) (a), 2.02 (7) (b), and 2.02 (7) (b) 2., relating to electronic seals and signatures.

Agency Procedure for Promulgation

A public hearing is required and will be held on April 25, 2013, at 1400 East Washington Avenue, Room 121, Madison, Wisconsin (enter at 55 North Dickinson Street).

Contact Person

Shancethea Leatherwood, Department of Safety and Professional Services, Division of Policy Development, 608-261-4438 or Shancethea.L Leatherwood@wisconsin.gov.

Rule-Making Notices

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. 1— EmR1304

(DNR # FH-23-12(E))

NOTICE IS HEREBY GIVEN THAT pursuant to and interpreting ss. 29.014 (1), 29.041, and 29.519 (1m) (b), Stats., the Department of Natural Resources will hold a public hearing on revisions to chs. NR 20 and 25, Wis. Adm. Code, in emergency rule Order FH-23-12(E) relating to lake trout harvest limits on Lake Superior.

The hearing will be held on:

Hearing Information

Date: Thursday, April 11, 2013
Time: 6:00 p.m.
Location: Bayfield Ranger Station
141 S. Third Street
Bayfield, WI 54814

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of information material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Peter Stevens at (715) 779-4035 Ext: 12 with specific information on your request at least ten days before the date of the scheduled hearing.

Availability of Rules and Submitting Comments

The proposed rule and supporting documents may be reviewed and comments electronically submitted at the following internet site: <http://adminrules.wisconsin.gov>. A copy of the proposed rules and supporting documents may also be obtained from Peter Stevens, Bureau of Fisheries Management, 141 S. Third Street, Bayfield WI, 54814 or peter.stevens@wisconsin.gov.

Written comments on the proposed rule may be submitted via U.S. mail or email to Peter Stevens at the addresses noted above. Written comments, whether submitted electronically or by U.S. mail, will have the same weight and effect as oral statements presented at the public hearing. Comments may be submitted until April 30, 2013.

Analysis Prepared by the Department of Natural Resources

The welfare of state-licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012-13 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior, revises rules limiting gill-net fishing effort, and authorizes limitations on recreational fishing if the recreational lake trout harvest exceeds specified limits. The

rule elements have been negotiated to develop the State-Tribal Lake Superior Agreement.

Section 1 of the rule authorizes the department to enforce a reduced daily bag limit for lake trout in Lake Superior if the recreational lake trout harvest during the 2012-13 fishing season exceeds 95% of the total allowable recreational lake trout harvest of 27,500 fish ($27,500 \times 0.95 = 26,125$). If total lake trout harvest during that same time exceeds 98% of the total allowable harvest ($27,500 \times 0.98 = 26,950$), a zero bag limit would be enforced and no fish could be harvested. Recreational lake trout harvest is measured by conducting department creel surveys during which staff gather harvest information directly from anglers at the water.

Section 2 reduces the annual state-licensed and tribal commercial fishing harvest quota for lake trout on Lake Superior.

Section 3 amends the calculation used to determine the footage of gill net that may be set in the water by each fisher, also called "fishing effort." Each fisher is allowed to fish only the amount of net that would cause an incidental catch and kill of his or her lake trout quota.

Statutes interpreted

Sections 29.014 (1), 29.041, and 29.519 (1m) (b), Stats.

Statutory authority

Sections 29.014 (1), 29.041, and 29.519 (1m) (b), Stats.

Explanation of agency authority to promulgate the proposed rules under the statutory authority

Section 29.014 (1), Stats., directs the department to establish and maintain conditions governing the taking of fish that will conserve the fish supply and ensure the citizens of this state continued opportunities for good fishing.

Section 29.041, Stats., provides that the department may regulate fishing on and in all interstate boundary waters and outlying waters.

Section 29.519 (1m) (b), Stats., authorizes the department to limit the number of Great Lakes commercial fishing licenses, designate the areas in the outlying waters under the jurisdiction of this state where commercial fishing operations are restricted, establish species harvest limits, and designate the kind, size and amount of gear to be used in the harvest.

Related statutes or rules

29.973 Commercial fish reporting system

Summary of and comparison with existing or proposed federal statutes and regulations.

The department is not aware of any existing or proposed federal regulation that would govern commercial fishing in Wisconsin's waters of Lake Superior.

Comparison with rules in adjacent states

Of the four adjacent states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but tribal harvest is guided by the same modeling approach as in Wisconsin.

Summary of factual data and analytical methodologies

The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state-licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. A ten-year State-Tribal Lake Superior Agreement specifies annual allowable lake trout harvests, defines refuges and special fishing areas, and establishes other terms and arrangements for state and tribal commercial fishing. The allowable lake trout harvests are reviewed by a state-tribal biological committee using the latest available data and modeling results. Based on those results and recommendations from the biological committee, the Agreement is re-negotiated as needed to change the total annual harvest of lake trout by all fishers, and possibly to address other issues related to shared harvest of lake trout and other species by state and tribal fishers.

There has been a steady decline in lean lake trout abundance in Lake Superior since the early 2000s. This decline has been confirmed by independent surveys conducted by the department and has been projected by models used to set safe harvest levels. Some level of decline was expected due to high harvest limits in the early 2000s, which were in response to several large year classes (numbers of fish spawned in the same year) predicted to enter the fishery. However, mortality of lake trout from sea lamprey over the last eight years has also been higher than Lake Superior target levels. This combination of increased harvest and lamprey mortality has caused lake trout abundance to decline. While relatively stable abundances of spawning lake trout suggest that this decline is still reversible, action needs to be taken to arrest the lean lake trout population's decline. The decline in lake trout population abundances and predicted further declines necessitate the emergency harvest reductions in order to ensure a sustainable lake trout fishery over the long-term.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

There would be no implementation costs for the department. State-licensed and tribal commercial fishers may be affected by the amount of fish they are able to harvest. It is not expected that fishers will have any compliance expenditures or reporting changes associated with the rule.

The decline in lean lake trout abundance in Lake Superior has been confirmed by surveys conducted by the department and has been projected by models used to set safe harvest

levels. Rule changes are necessary in order to ensure a sustainable lake trout fishery over the long-term.

Effects on Small Business

The proposed rule change would impact state-licensed commercial fishers, tribal commercial fishers, fish wholesalers, and others whose interests or businesses are affected by commercial fishing. Minimal impact is expected for businesses or business associations. No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

The rule will be enforced by department conservation wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

Final regulatory flexibility analysis

The proposed rule is expected to have minimal economic impact on small businesses. The department determined this rule would not adversely affect in a material way the economy, a sector of the economy, productivity, jobs, or the overall economic competitiveness of this state.

The department's Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us or by calling (608) 266-1959.

Rules Proposed by the Department of Veterans Affairs

No information.

Environmental Impact

The department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the department's consideration of the impacts of the proposal and reasonable alternatives.

Agency Contact Person

Peter Stevens
Department of Natural Resources
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Bayfield WI, 54814
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STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Sections of chs. NR 20 and 25 related to lake trout harvest limits in Lake Superior

3. Subject

The emergency rule will implement harvest limits for the 2012–13 lake trout commercial harvest season. It reduces the annual commercial fishing harvest limit for lake trout on Lake Superior, revises rules limiting gill–net fishing effort, and authorizes limitations on recreational fishing based on negotiations to develop the State–Tribal Lake Superior Agreement

4. Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG ☐ SEG–S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☒ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☒ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☒ Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

The welfare of state–licensed commercial fishers, tribal commercial fishers, recreational anglers, and associated businesses is threatened by a decline in the lake trout population in the Apostle Islands vicinity of Lake Superior. The emergency rule is necessary to implement harvest limits for the 2012–13 lake trout commercial harvest season.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The purpose of the emergency rule is to amend Lake Superior lake trout harvest limits as required by revisions to the State–Tribal Lake Superior Agreement. The total allowable catch of lake trout in Wisconsin waters of Lake Superior is divided among tribal commercial fisheries, state–licensed commercial fisheries, tribal subsistence fishers, and state sport anglers. Lake trout harvest limits were negotiated in October 2012 among the Department of Natural Resources and the Red Cliff and Bad River Bands of Lake Superior Chippewa and those changes must be ordered through Administrative Code. The Department met with the Lake Superior Commercial Fishing Board in November 2012. The Board understood the biological need for making harvest quota changes, but it had concerns that cuts be made fairly and equitably across all fishers.

11. Identify the local governmental units that participated in the development of this EIA.

N/A

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule may limit the commercial harvest of lake trout and other species by state–licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2011 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, this rule will also limit the amount of gill net effort commercial fishers can use to target whitefish since lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$160,000 in 2011. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$40,000 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non–target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish “alternative enforcement mechanisms” for “minor violations” of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

A predicted continued decline in lake trout population abundances necessitates the current reductions in harvest numbers to support a sustainable lake trout fishery over the long-term. Allowing harvest at current quota and effort limits – an alternative to implementing the rule – is not biologically sustainable and could create negative economic impacts for commercial fishers.

14. Long Range Implications of Implementing the Rule

Reducing quota and effort limits for commercial fishers, authorizing harvest limits on recreational fishers, and monitoring lake trout populations will support a sustainable lake trout fishery over the long-term.

15. Compare With Approaches Being Used by Federal Government

Authority to promulgate fishing regulations is granted to states. None of the proposed changes violate or conflict with federal regulations.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Of the four states, only Minnesota and Michigan have lake trout fisheries on the Great Lakes. The commercial harvest of lake trout from Minnesota waters of Lake Superior is limited to a population assessment fishery. In Michigan waters of Lake Superior there is no state-licensed commercial fishery, but there is a tribal harvest guided by the same modeling approach as Wisconsin.

17. Contact Name

Peter Stevens

18. Contact Phone Number

(715) 779-4035 Ext. 12

This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The rule may limit the commercial harvest of lake trout and other species by state-licensed and tribal commercial fishers. The total dockside value of the reported state commercial lake trout harvest in 2011 was approximately \$20,000. Harvest is not expected to be reduced by more than 25% and therefore the lost value of lake trout is not expected to exceed \$5,000. However, this rule will also limit the amount of gill net effort commercial fishers can use to target whitefish since lake trout are frequently caught in the same nets. Reductions in gill net effort therefore have the potential to cause commercial fishers additional income reductions. The total dockside value of whitefish harvested by state commercial fishers in gill nets was approximately \$160,000 in 2011. Harvest is expected to be reduced by no more than 25% putting the total loss at no more than \$40,000 and likely less because fishers can shift to using trap nets that are not subject to the same effort restrictions governing gill nets. Moreover, commercial fishers can continue current efforts to adjust the location, time, and manner in which they set gill nets targeting whitefish so as to reduce harvest of non-target lake trout. The exact amount of economic impact is unknown, but is not expected to exceed \$50,000.

The proposed rule does not impose any compliance or reporting requirements on small businesses nor are any design or operational standards contained in the rule. The rule does not allow for the potential to establish a reduced fine for small businesses, nor does it establish "alternative enforcement mechanisms" for "minor violations" of administrative rules made by small businesses. Public utility rate payers and local governmental units will not be affected by the rule.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Dockside values of fish; commercial fishing harvest reports.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☒ Less Stringent Compliance or Reporting Requirements
- ☒ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☒ Consolidation or Simplification of Reporting Requirements
- ☒ Establishment of performance standards in lieu of Design or Operational Standards
- ☒ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

No additional compliance or reporting requirements will be imposed on small businesses as a result of these rule changes.

5. Describe the Rule's Enforcement Provisions

The rule will be enforced by Department Conservation Wardens under the authority of chapter 29, Stats., through routine patrols, record audits of wholesale fish dealers and commercial fishers, and follow up investigations of citizen complaints.

6. Did the Agency Prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes ☒ No

Notice of Hearing

Natural Resources

*Fish, Game, etc., Chs. 1—
Environmental Protection—General, Chs. 100—*

*Environmental Protection—Water
Regulation, Chs. 300—*

*Environmental Protection—Air Pollution
Control, Chs. 400—*

*Environmental Protection—Solid Waste
Management, Chs. 500—Environmental*

*Protection—Hazardous Waste Management, Chs. 600—
Environmental Protection—Water Supply, Chs. 800—*

CR 13-022

(DNR # OE-46-10)

The Wisconsin Natural Resources Board proposes an order to revise chs. NR 2, 19, 51, 108, 110, 126, 134, 150, 166, 101, 300, 305, 310, 327, 345, 410, 512, 670, and 820, relating to the Department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act.

NOTICE IS HEREBY GIVEN that pursuant to ss. 1.11 and 227.11, Wis. Stats., the Department of Natural Resources will hold public hearings on revisions to ch. NR 150, Wis. Adm. Code, relating to the Department's environmental analysis and review procedures under the Wisconsin Environmental Policy Act. The proposed rule revisions would make the Department's WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Wis. Stats. The revised rule will emphasize the analysis of broad issues and policies, de-emphasize document production for individual project actions, and provide for meaningful public involvement.

The hearing will be held on:

Hearing Information

Date: Tuesday, April 16, 2013

Time: 11:00 a.m. to 2:00 p.m.

Location: Eau Claire Room
LE Philips Memorial Library
400 Eau Claire Street
Eau Claire, WI

Date: Tuesday, April 16, 2013

Time: 11:00 a.m. to 2:00 p.m.

Location: Green Bay DNR Service Center
2984 Shawano Avenue
Green Bay, WI

Date: Tuesday, April 16, 2013

Time: 2:00 p.m. to 5:00 p.m.

Location: Room G09
State Natural Resources Building (GEF 2)
101 South Webster Street
Madison, WI

The Department will hold an open house for one-half hour prior to each hearing. Department staff will be available to answer questions regarding the proposed rule.

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Jeff Schimpff at (608) 267-7853 with specific information on your request at least 10 days before the date of the scheduled hearing.

Availability of Rules and Submitting Comments

The proposed rule may be reviewed and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov>. Information concerning the Natural Resources Board review of this rule is available at the following internet site: <http://dnr.wi.gov/about/nrb/>.

Written comments on the proposed rule may be submitted via U.S. Mail to Mr. Jeff Schimpff, Bureau of Energy, Transportation, and Environmental Analysis (ETEA/7), P.O. Box 7921, Madison, WI 53707. Comments may be submitted until April 26, 2013. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings. A personal copy of the proposed rule and fiscal estimate may be obtained from Mr. Jeff Schimpff, Bureau of Energy, Transportation, and Environmental Analysis (ETEA/7), P.O. Box 7921, Madison, WI 53707.

Analysis Prepared by the Department of Natural Resources

Statutes interpreted

Section 1.11, Stats.

Statutory authority

Sections 1.11 and 227.11, Stats.

Explanation of agency authority

The Department has general authority to promulgate rules under s. 227.11 (2) (a), Stats., that interprets the specific statutory authority granted in s. 1.11, Stats.

Related statutes or rules

WEPA compliance is a requirement for all state agencies and Department programs. As a result, many statutes and codes are WEPA and NR 150-related.

Statute chapters: Chapters 16, 23, 30, 33, 160, 196, 227, 285, 289, 291, and 293, Stats.

Administrative Code chapters: Chapters NR 1, 2, 19, 44, 48, 52, 60, 103, 107, 108, 110, 126, 128, 131, 132, 133, 134, 162, 166, 182, 191, 200, 243, 299, 300, 305, 310, 327, 345, 347, 406, 410, 489, 512, 670, 820, and 852.

The department proposes several housekeeping changes to some of these other administrative codes that would have obsolete ch. NR 150 references after the changes to ch. NR 150 are codified.

Plain language analysis

WEPA and ch. NR 150 are cornerstone laws for the agency that date back to the early 1970's. The rule change will make

the Department's WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Wis. Stats. The new rule emphasizes the analysis of broad issues and policies, reduces process and paperwork requirements for individual project actions, and provides clear procedures for public involvement.

The new rule will require that the Department: 1) identify and analyze environmental issues important for their geographic, multidisciplinary, or policy scope; 2) analyze issues earlier, when alternative options have not been foreclosed; 3) provide that environmental analysis information be incorporated into departmental policy and decision-making; 4) define and provide meaningful public involvement; 5) address the information/policy-driven requirements of s. 1.11 (2) (e) and (h), Stats., as separate from the action/project-driven requirements of s. 1.11 (2) (c), Stats.; 6) identify and eliminate process requirements that have become duplicative over time as a result of changes in statutory authorities and administrative practice; and 7) replace the current Ch. NR 150, Wis. Adm. Code type list with criteria for identifying, prioritizing, analyzing and seeking public input on relevant issues.

The new rule eliminates the use of Environmental Assessments as a means of WEPA compliance for individual actions. The new rule adds new process and procedures for bigger picture strategic policy analyses.

The fundamental Department policy regarding WEPA, as currently embodied in NR 150, will not change. The rule re-creation will result in a number of procedural changes and a new emphasis on how the Department applies the Wisconsin Environmental Policy Act, especially to its policy development actions.

Summary and comparison with existing and proposed federal regulations

The 1970 Wisconsin Environmental Policy Act (WEPA) and s. 1.11, Stats., were modeled after the federal National Environmental Policy Act (NEPA) of 1969. NEPA created the Council on Environmental Quality (CEQ), which established guidelines and regulations to implement the Act. As with other state agencies' WEPA rules, ch. NR 150 was based in part upon the federal CEQ guidelines. This proposed revision of ch. NR 150 will remain substantially consistent with the CEQ guidelines.

Comparison of similar rules in adjacent states

Neighboring states have significant differences in their related laws, so the opportunity to gain from their experience is limited. For example, Minnesota requires that counties also follow WEPA-like analysis procedures, whereas Wisconsin counties have no such requirements. Illinois' law covers only actions conducted by the state itself, whereas in Wisconsin,

WEPA applies to all actions by other entities that are subject to state approvals.

Summary of factual data and analytical methodologies

The Department of Natural Resources Office of Energy and Environmental Analysis (OEEA) staff reviewed relevant WEPA case law and federal CEQ regulations, obtained the input of an internal team of staff from several Department programs, and involved a broad range of potentially interested and affected external parties.

Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis

Chapter NR 150 is an administrative process rule that applies internally to the Department, so impacts to businesses are minimal.

Effect on Small Business

Businesses that may be affected by this rule revision include mainly those that are required to apply for certain DNR permits for projects. The level of environmental analysis required for DNR actions will be considerably less under the proposed rule.

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at SmallBusinessReg.Coordinator@dnr.state.wi.us or by calling (608) 266-1959.

Environmental Impact

The Department has made a preliminary determination that this action does not involve significant adverse environmental effects and does not need an environmental analysis under ch. NR 150, Wis. Adm. Code. However, based on the comments received, the Department may prepare an environmental analysis before proceeding with the proposal. This environmental review document would summarize the Department's consideration of the impacts of the proposal and reasonable alternatives.

A Copy of any Comments and Opinion Prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for Rules Proposed by the Department of Veterans Affairs

Not applicable.

Agency Contact Person

David Siebert, Director
Office of Energy and Environmental Analysis
Phone: (608) 264-6048
David.Siebert@Wisconsin.gov

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 150 – Environmental analysis and review procedures for department actions.

3. Subject

Implementation of Wisconsin Environmental Policy Act, s. 1.11 Wis. Stats.

4. Fund Sources Affected

☒ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

No

6. Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☐ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses (**if checked, complete Attachment A**)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

This rule was last updated in a significant way in 1987. Over time, many WEPA process requirements have become duplicative of analysis and public involvement steps in internal review processes and regulatory program processes. This is a result of changes in statutory authorities and administrative practice, especially in the operations of environmental permit review programs. The revised rule emphasizes identifying and eliminating such duplication. This rule proposes to shift resources to conducting issue or policy analyses.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Businesses that may be affected by this rule revision include mainly those that are required to apply for certain DNR permits for projects. The workload of environmental analysis required for repetitive DNR actions will be considerably less under the proposed rule. Chapter NR 150 is an administrative process rule that applies internally to DNR, so any impacts to businesses are minimal. DNR convened an external group to advise on rule development that included agribusiness, developers, manufacturers, homebuilders, utilities and conservation groups.

11. Identify the local governmental units that participated in the development of this EIA.

Our external review group included a representative of the WI Towns Assn, as well as an attorney who regularly represents municipalities on wastewater, wetlands, waterway, water supply, stormwater and other environmental issues.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

We estimate that the proposed rule will have a minimal economic impact because it affects the internal operating procedures of the department. It does not directly affect businesses, local governments, or other entities. Although the intent of the proposal is to increase the efficiency and effectiveness of department project-specific actions under WEPA, any staff resources made available as a result will be devoted to other issues that address the broader impacts of categories of actions of generally statewide importance.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The rule change will make the Department's WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Wis. Stats. The revised rule will emphasize the analysis of broad issues and policies, de-emphasize workload associated with individual project actions, and provide meaningful public involvement. The new rule will require that the Department: 1) identify and analyze environmental issues important for their geographic, multidisciplinary, or policy scope; 2) analyze issues earlier, when alternative options have not been foreclosed, and on an ongoing basis; 3) provide that environmental analysis information be incorporated into departmental policy and decision-making; 4) define and provide meaningful public involvement; 5) address the information/policy-driven requirements of s. 1.11(2)(e) and (h) as separate from the action/project-driven requirements of s. 1.11(2)(c); 6) identify and eliminate process requirements that have become duplicative over time as a result of changes in statutory authorities and administrative practice; and 7) replace the current Ch. NR 150, Wis. Adm. Code type list with criteria for identifying, prioritizing, analyzing and seeking public input on relevant issues.

Alternatives to the proposed rule changes would include leaving NR 150 as it currently is. This alternative was rejected as not meeting the need to more effectively and efficiently implement s. 1.11, Wis. Stats.

14. Long Range Implications of Implementing the Rule

The rule change will make the Department's WEPA compliance more effective, meaningful and consistent with WEPA and s. 1.11, Wis. Stats.

15. Compare With Approaches Being Used by Federal Government

This revised rule is similar to the existing rule, in that it substantially follows the guidelines of the federal Council on Environmental Quality, as directed by s. 1.11, Wis. Stats.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Neighboring states have significant differences in their related laws, so the opportunity to gain from their experience is limited. For example, Minnesota requires that counties also follow WEPA-like analysis procedures, whereas Wisconsin counties have no such requirements. Illinois' law covers only actions conducted by the state itself, whereas in Wisconsin, WEPA applies to all actions by other entities that are subject to state approvals.

17. Contact Name

David Siebert

18. Contact Phone Number

608-264-6048

This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

None

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

None

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements

X Other, describe:

NR 150 is largely an internal process rule, so rule changes would have no measurable impact upon small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

Not applicable.

5. Describe the Rule's Enforcement Provisions

This rule carries no enforcement provisions. Disputes regarding the need to conduct an analysis and the procedures to follow for the analysis and public involvement have administrative and judicial avenues of appeal.

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes **X** No

Notice of Hearing

Natural Resources

Fish, Game, etc., Chs. NR 1— CR 13-023

(DNR # FR-24-11)

NOTICE IS HEREBY GIVEN THAT pursuant to Section 28.05 (3) (am), Wis. Stats., the Department of Natural Resources will hold a public hearing on revisions to ch. NR 1, Wisc. Adm. Code, relating to the promulgation of a rule that establishes a program allowing cooperating foresters and private contractors to assist the state in regenerating harvested areas of state lands to meet the annual allowable timber harvest established under Wis. Stat. s. 28.025. The statute also directs the department to pay for the services from a portion of the proceeds received from timber sales. Section 28.05 (3) (am) Wis. Stats., created by 2011 Act 32; and Section 28.025, Wis. Stats., created by 2005 Act 166, required the Department to promulgate this rule.

Hearing Dates and Locations

Date: Friday, April 26, 2013
Time: 1:30 p.m.
Location: State Natural Resources Building
 Room G09 (GEF 2)
 101 S. Webster Street, Madison, WI 53703

Pursuant to the Americans with Disabilities Act, reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Please call Tim Beyer at (920) 892-8756 x3047 with specific information on your request at least 10 days before the date of the scheduled hearing.

Copies of Documents

The proposed rule and supporting documents, including the fiscal estimate may be viewed and downloaded and comments electronically submitted at the following Internet site: <http://adminrules.wisconsin.gov> (Search this Web site using the Natural Resources Board Order No. FR-24-11). If you do not have Internet access, a personal copy of the proposed rule and supporting documents may be obtained from, Tim Beyer, 1155 Pilgrim Road, Plymouth, WI 53073 or by calling (920) 892-8756 x3047.

Written Comments

Written comments on the proposed rule may be submitted via U.S. mail to Mr. Tim Beyer, Wisconsin Department of Natural Resources, 1155 Pilgrim Road, Plymouth WI 53073 or by e-mail to tim.beyer@wisconsin.gov. Comments may be submitted until April 8th, 2013. Written comments whether submitted electronically or by U.S. mail will have the same weight and effect as oral statements presented at the public hearings.

Analysis Prepared by the Department of Natural Resources

Statutes interpreted

Section 28.05 (3) (am), Wis. Stats., created by 2011 Act 32; and section 28.025, Wis. Stats., created by 2005 Act 166.

Statutory authority

Section 28.05 (3) (am), Wis. Stats.

Explanation of agency authority to promulgate the proposed rules under the statutory authority

2011 Act 32, Section 913e., s. 28.05 (3) (am), Wis. Stat., directs the department to, by rule, establish a program that allows cooperating foresters and private contractors to assist the state in regenerating harvested areas of state lands to meet the annual allowable timber harvest established under Wis. Stat. s. 28.025. The statute also directs the department to pay for the services from a portion of the proceeds received from timber sales.

Related rule or statute

Sections 28.02, 28.025, 28.04 and 28.05, Stats., give authority to the department to hold and acquire forestland, to manage it sustainably for numerous purposes and benefits, to identify and undertake allowable timber harvests, and to regenerate said affected annual harvest areas.

Plain language analysis

This rule will include provisions authorizing the department to contract with cooperating foresters and private contractors to conduct artificial and natural forest regeneration activities including site preparation, tree planting, and invasive species control associated with forest regeneration. The rule shall authorize cooperating foresters and private contractors with whom the department contracts under this paragraph to receive a portion of the proceeds from timber harvests on state lands.

Summary of, and comparison with, existing or proposed federal regulation

The federal government provides a similar mechanism on federal lands. The USDA Forest Service utilizes the Knutson-Vandenberg – Brush Disposal (KV-BD) accounts, which are deductions from timber sales to fund forest regeneration and reduce fire hazard. The USDI Bureau of Indian Affairs utilizes Forest Management Deductions (FMD) under 25. CFR § 163.25 for a similar purpose.

Comparison with rules in adjacent states

A search of rules in Minnesota, Michigan, Iowa and Illinois revealed that these adjacent states do not have any similar rules.

Summary of factual data and analytical methodologies

2005 Act 166 promulgated the process to provide an inventory of all forested public lands, identify the forest resources available for management, develop annual allowable harvest levels, and undertake such management within 90% and 110% of those levels. Act 166 further provided a mechanism, through the use of Cooperating Foresters, to assist the department in establishing timber sales. What was not provided was an additional funding source to implement pre and post-harvest regeneration treatments in the areas identified to be managed. These funds are needed to ensure the forest continues to be sustainably managed and to assure that the post-harvest stand will continue to produce re-occurring forest products and other public benefits within state and certification guidelines. To date, department owned lands have seen a 190% increase in timber sale activity since 2005 from approximately 9700 acres to approximately 25,000 acres per year. With an increase in timber sale activities, regeneration needs closely follow the acres harvested.

In 2009, the Division of Forestry went through a property level analysis of what their projected annual regeneration needs would be (both in cost and area) for the next 10 years

based on projected annual allowable harvest levels based on 2005 Act 166. It was determined that the regeneration costs (manpower, services, and supplies) significantly out-paced the funding available to perform regeneration related work given the increase in harvest levels.

In the absence of the new rule the department would rely on gifts, grants, and limited existing regeneration funds to implement regeneration activities on state owned lands. In the event that these funding sources would fall short of regeneration needs, the ability to achieve future desired conditions on state lands will continue to be hampered. In addition, land managers may be apprehensive to manage more complex ecosystems where a quick response of regeneration is required. The new rule will provide assurance that funding will be available to implement forest regeneration activities after harvesting has occurred.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report

There are no new compliance, reporting, or bookkeeping requirements with the proposed rule.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

Effect on Small Business

This rule does affect small business. It would create opportunities for cooperating foresters and private contractors to expand into providing more services on state-owned lands; but the rule does not impose any new regulatory requirements on small businesses.

Pursuant to s. 227.114, Stats., it is not anticipated that the proposed rule will have an economic impact on small businesses. The Department's Small Business Regulatory Coordinator may be contacted at DNRSmallBusinessCoordinator@Wisconsin.gov or by calling (608) 266-1959.

Environmental Assessment

The Department has made a determination that this is a Type III action under Chapter NR 150, Wis. Admin. Code. No environmental assessment is required.

Agency Contact Person

Teague Prichard, State Lands Specialist
Bureau of Forest Management
Ph: 608-264-8883
Email: Teague.Prichard@Wisconsin.gov

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Chapter NR 1, contracting with cooperating foresters and private contractors for regenerations services, s. NR 1.27.

3. Subject

Contracting with cooperating foresters or private contractors for forest regeneration services on harvested lands owned and managed by the Department of Natural Resource.

4. Fund Sources Affected

☐ GPR ☐ FED ☐ PRO ☐ PRS ☒ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.370 (1) (cy)

6. Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☒ Increase Existing Revenues
☐ Indeterminate ☐ Decrease Existing Revenues

☐ Increase Costs
☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

☒ State's Economy ☒ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☒ Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

2005 Assembly Bill 254 and the resulting 2005 Act 166 promulgated the process to provide an inventory of all forested Department of Natural Resource lands, identify the forest resources available for management, develop annual allowable harvest levels, and undertake such management within 90% and 110% of those levels. Act 166 further provided a mechanism, through the use of Cooperating Foresters, to assist the department in establishing timber sales. What was not provided was an additional funding source to implement pre and post harvest regeneration treatments in the areas harvested. These funds are needed to ensure the forest continues to be sustainably managed and to assure that the post harvest stand will continue to produce re-occurring forest products and other public benefits within state and certification guidelines. To date, Department owned lands have seen a 190% increase in timber sale activity since 2005 from approximately 9700 acres to approximately 25,000 acres per year. With an increase in timber sale activities, regeneration needs closely follow the acres harvested.

In the absence of the new rule the Department would rely on gifts, grants, and limited existing regeneration funds to implement regeneration activities on state owned lands. These funding sources fall short of regeneration needs and the ability to achieve future desired conditions on state lands will continue to be hampered. In addition, land managers may be apprehensive to harvest in more complex ecosystems where a quick response of regeneration is required. The new rule will provide assurance that funding will be available to implement forest regeneration activities after harvesting has occurred.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Entities that may be affected by the proposed rule that were contacted for comments include: cooperating foresters and private contractors that perform regeneration services. The department utilized a e-mail distribution list that includes registered cooperating foresters, members of Wisconsin Consulting Foresters (WCF), and small businesses that perform regeneration services.

11. Identify the local governmental units that participated in the development of this EIA.

No local units of government are affected by this rule and as such none were involved in the development of the EIA

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The rule will provide a positive economic impact on short and long term business opportunities for contractors that perform and provide regeneration services and equipment. It is estimated that annual state spending under the rule will be between \$300,000.00 and \$600,000.00. This will support between 6,000 and 12,000 contractor-hours spread across the entire state, but concentrated in rural areas. The forests will continue to be sustainably managed and assure that the post harvest stand will continue to produce re-occurring forest products and other public benefits, including long-term support of Wisconsin forest products industry.

Minimal implementation or compliance costs are expected to be incurred. Any oversight or administration of this rule will be performed by existing staff.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The new rule will provide assurance that funding will be available to implement forest regeneration activities after harvesting has occurred. In the absence of the new rule the Department would rely on gifts, grants, and limited existing regeneration funds to implement regeneration activities on state owned lands. Implementing the rule will allow the Department to meet land management objectives identified in property master plans and provide assurances that harvested lands will be regenerated and those harvested lands will be managed accordingly.

14. Long Range Implications of Implementing the Rule

Wisconsin's state forests will continue to be sustainably managed and to assure that the post harvest stand will continue to produce re-occurring forest products and other public benefits within state guidelines.

15. Compare With Approaches Being Used by Federal Government

The Federal Government provides a similar mechanism on federal lands. The USDA Forest Service utilizes the Knutson-Vandenberg) – Brush Disposal (KV-BD) accounts, which are deductions from timber sales to fund forest regeneration and reduce fire hazard. The USDI Bureau of Indian Affairs utilizes Forest Management Deductions (FMD) under 25. CFR § 163.25 for a similar purpose and method.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

A search of rules in Illinois, Iowa, Michigan, and Minnesota revealed that these states do not have similar rules

17. Contact Name

Tim Beyer

18. Contact Phone Number

(920) 892-8756 x3047

This document can be made available in alternate formats to individuals with disabilities upon request.

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

The rule will provide a positive economic impact on short and long term business opportunities for contractors that perform and provide regeneration services and equipment. It is estimated that annual state spending under the rule will be between \$300,000.00 and \$600,000.00. This will support between 6,000 and 12,000 contractor-hours spread across the entire state, but concentrated in rural areas. The forests will continue to be sustainably managed and assure that the post harvest stand will continue to produce re-occurring forest products and other public benefits, including long-term support of Wisconsin forest products industry.

There are no new compliance, reporting, or bookkeeping requirements with the proposed rule.

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

This rule is not expected to have any adverse impact on small businesses.

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☐ Less Stringent Compliance or Reporting Requirements
☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
☐ Consolidation or Simplification of Reporting Requirements
☐ Establishment of performance standards in lieu of Design or Operational Standards
☐ Exemption of Small Businesses from some or all requirements

X Other, describe:

There will be no impact on small businesses.

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

This rule provided a positive economic impact on small businesses the perform regeneration services. Minimal implementation or compliance costs are expected to be borne by small businesses. It simply provides a funding mechanism to fund regeneration work on state managed lands.

5. Describe the Rule's Enforcement Provisions

There are no enforcement provisions specific to this rule other than enforcement of performance measures outlined in State of Wisconsin Professional Services contracts (specific performance criteria, state labor laws, etc.).

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

☐ Yes **X** No

Notice of Hearing

**Safety and Professional Services —
Pharmacy Examining Board**

CR 13-018

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Pharmacy Examining Board in ss. 15.08 (5) (b) and 450.11, Wis. Stats., and interpreting ss. 450.01 (7) and 450.11, Wis. Stats., the Pharmacy Examining Board will hold a public hearing at the time and place indicated below to consider an order to amend s. Phar 7.01 (1) (e) relating to delivery of prescription drugs.

Hearing Information

Date: Monday, April 15, 2013

Time: 9:00 a.m.

Location: 1400 East Washington Avenue, Room 121A
Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935,

Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Sharon Henes, Paralegal, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708–8935, or by email to Sharon.Henes@wisconsin.gov. Comments must be received at or before the public hearing to be held on April 15, 2013 to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Sharon Henes, Paralegal, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at Sharon.Henes@wisconsin.gov.

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Sections 450.01 (7) and 450.11, Stats.

Statutory authority

Sections 15.08 (5) (b) and 450.02 (3) (a), Stats.

Explanation of agency authority

Section 15.08 (5) (b), allows each examining board to “promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 450.02 (3) (a), Stats., authorizes the Board to promulgate rules “[r]elating to the...distribution and dispensing of prescription drugs.”

Related statute or rule

Chapter Phar 7.

Plain language analysis

The proposed amendment to S. Phar 7.01 (1) (e) allows the delivery of the prescription medication(s) to be delivered to a location of the patient's choice. The consultation requirement is met by the pharmacist providing a notice that consultation is available relative to the prescription(s) being delivered. In these cases directions and a means of contacting the pharmacist must accompany the delivery.

Summary of, and comparison with, existing or proposed federal regulation

None.

Comparison with rules in adjacent states

Illinois: Under Illinois law, dispensing does not mean the physical delivery to a patient or a patient's representative in a home or institution by a designee of a pharmacist by a common carrier [Pharmacy Practice Act, 225 ILCS 85/sec. 3(m)].

Under Ill. Admin. Code title 68, s. 1330.70: “Oral counseling is not practicable for the patient or patient's agent, the pharmacist shall use alternative forms of patient

information. When used in place of oral counseling, alternative forms of patient information shall advise the patient or agent that the pharmacist may be contacted for consultation in person at the pharmacy or by toll-free or collect telephone service.”

Iowa: Under Iowa law, there is a requirement that pharmacists be responsible for delivery of prescription drugs to the patient or patient's agent; no specific location of such delivery is mentioned. If in the pharmacist's professional judgment oral counseling is not practicable, the pharmacist may use alternative forms of patient information. “Not practicable” refers to patient variables including, but not limited to, the absence of the patient or patient's caregiver. When used in place of oral counseling, alternative forms of patient information shall advise the patient or caregiver that the pharmacist may be contacted for consultation in person at the pharmacy by toll-free telephone or collect telephone call. [Iowa Admin. Code 657–6.2(7); 657–6.14(4)]

Michigan: Under Michigan administrative rules, a prescription is dispensed to the patient or the patient's caregiver. A caregiver is defined as the parent, guardian or other individual who has assumed responsibility for providing a patient's care. A pharmacist shall communicate to the patient or the patient's caregiver, necessary and appropriate information regarding safe and effective medication use at the time a prescription is dispensed. The information shall be communicated orally and in person, except when the patient or patient's caregiver is not at the pharmacy or when a specific communication barrier prohibits oral communication. In either situation, providing printed material designed to help the patient use the medication safely and effectively satisfies the requirements. A consultation is not required if a patient or a patient's caregiver refuses a consultation. [Mich. Admin. Code r 338.490]

Minnesota: Under Minnesota administrative rules, when a new filled prescription or a refilled prescription for which counseling is required is being mailed or delivered to the patient by common carrier or delivery services, the consultation must still be provided but may be accomplished by providing written information to the patient regarding the medication being dispensed and the availability of the pharmacist to answer questions and through a toll-free phone number for long distance calls.. There is nothing in the administrative code which indicates a specific location for a delivery. [Minn. R. 6800.0910]

Summary of factual data and analytical methodologies

Pharmacy Examining Board receives and grants many requests for variances to Phar 7.01 (1) (e). The Pharmacy Examining Board determined that permitting the delivery to a location of a patient's choice would be beneficial to patients and to pharmacies without negatively impacting public safety.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis

This rule was posted for public comment on the economic impact of the proposed rule, including how this proposed rule may affect businesses, local government units and individuals, for a period of 14 days. No comments were received relating to the economic impact of the rule.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis is attached.

Initial Regulatory Flexibility Analysis or Summary

Delivery of prescriptions is already allowed by rule. The location of the delivery will not have an impact on small business. This rule change will not have an effect on small business.

Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

Agency Contact Person

Sharon Henes, Paralegal, Department of Safety and

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA-2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707-7864
FAX: (608) 267-0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Section Phar 7.01 (1) (e)

3. Subject

Prescription drug delivery.

4. Fund Sources Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☐ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

The current rule does not provide enough flexibility for patients to have their prescription medication delivered to a location of their choice due to the limitation of delivery only to the patient's residence.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This rule was posted for 14 days for economic comments and none were received.

11. Identify the local governmental units that participated in the development of this EIA.

None. This rule does not affect local governmental units.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule will not have an economic or fiscal impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole. Delivery of prescriptions is already allowed by rule. The location of the delivery will not have an impact.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefit of implementing the proposed rule would allow patients to have their prescriptions delivered to a location of their choice. In addition, pharmacies would no longer have to request the Pharmacy Examining Board to grant a delivery variance. The Pharmacy Examining Board has determined that permitting the delivery to a location of a patient's choice would be beneficial to patients and to pharmacies without negatively impacting public safety. When prescriptions are delivered, the prescription will be accompanied by appropriate directions and an indication that consultation is available by contacting the pharmacist.

The alternative to the proposed change is for the rule to remain as it currently is which would limit the delivery to a patient's residence only unless a variance is granted by the Pharmacy Examining Board.

14. Long Range Implications of Implementing the Rule

The long range implication is patients will be better served by having their prescriptions delivered to more locations than just their place of residence and pharmacies will no longer have to request and wait for the next Board meeting in order to receive delivery variances.

15. Compare With Approaches Being Used by Federal Government

None.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Our four neighboring states do not indicate a limitation on delivery to only the patient's residence. In all four states, the consultation requirement is met by providing printed information, including directions on contacting the pharmacist by phone if a consultation is desired.

17. Contact Name

Sharon Henes

18. Contact Phone Number

(608) 261-2377

This document can be made available in alternate formats to individuals with disabilities upon request.

Notice of Hearing

Safety and Professional Services — Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors

CR 13-020

NOTICE IS HEREBY GIVEN that pursuant to authority vested in the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers, and Land Surveyors in ss. 15.08 (5) (b), 227.11 (2) (a), and 443.17, Wis. Stats., and interpreting s.443.17, Wis. Stats., the Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors will hold a public hearing at the time and place indicated below to consider an order to amend ss. A-E 2.02 (7) (a), 2.02 (7) (b), and 2.02 (7) (b) 2., relating to electronic seals and signatures.

Hearing Information

Date: Thursday, April 25, 2013
Time: 9:00 a.m.
Location: 1400 East Washington Avenue, Room 121
 Madison, WI

Appearances at the Hearing

Interested persons are invited to present information at the hearing. Persons appearing may make an oral presentation but are urged to submit facts, opinions and argument in writing as well. Facts, opinions and argument may also be submitted in writing without a personal appearance by mail

addressed to the Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8935, Madison, Wisconsin 53708. Written comments must be received at or before the public hearing to be included in the record of rule-making proceedings.

Place where Comments are to be Submitted and Deadline for Submission

Comments may be submitted to Shawn Leatherwood Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, WI 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received at or before the public hearing to be held on April 23, 2013 to be included in the record of rule-making proceedings.

Copies of Rule

Copies of this proposed rule are available upon request to Shawn Leatherwood Department of Safety and Professional Services, Division of Policy and Development, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, or by email at Shancethea.L Leatherwood@wisconsin.gov.

Analysis Prepared by the Department of Safety and Professional Services

Statutes interpreted

Section 443.17, Stats.

Statutory authority

Sections 15.08 (5) (b), 227.11 (2) (a), and 443.17, Stats.

Explanation of agency authority

The Examining Board of Architects, Landscape Architects, Professional Engineers, Designers and Land Surveyors has general power, pursuant to s. 15.08 (5) (b), Stats., to promulgate rules for guidance within its profession. The Boards may also promulgate rules that interpret statutes they enforce or administer per s. 227.11 (2) (a), Stats. Section 443.17, Stats., regulates the use of seals and is administered by the Board. Therefore, the Board is authorized to promulgate rules that give guidance on the use of seals or signatures.

Related statute or rule

Wis. Admin. Code s. A–E 2.02

Plain language analysis

Registration seals and signatures must be utilized in the production of plans, drawings, documents, specifications, and reports generated by architects, landscape architects, professional engineers, designers and land surveyors. The proposed rule would allow the afore mentioned professionals to use an electronic seal or signature on documents submitted to governmental agencies as long as the electronic seal or signature conformed to the requirements of subch. II, ch. 137, Stats. and the governmental agency accepts such documents.

Summary of, and comparison with, existing or proposed federal regulation

There are no comparable or existing proposed federal regulations

Comparison with rules in adjacent states

Illinois: Architects, Engineers and Land Surveyors must have a reproducible seal or facsimile, which may be computer generated. Ill. Admin. Code tit. 68 ss. 1150, 1380.295 and 1270.58 Illinois code expressly prohibits the use of signatures generated by computers. Illinois requires original signatures only.

Iowa: Professional Engineers and Professional Land Surveyors must use a certification block on original documents. The certification block requires a seal and a signature. A legible rubber stamp or facsimile of a seal may be used 193C IAC 6.1 (3) (542B) Computer generated seals may be used on final documents. Iowa Professional Engineers and Professional Land Surveyor licensees may affix a handwritten or secure electronic signature to the certification block as long as the signature is protected by a procedure that is, “adequate to (1) verify the signature is that of a specific person and (2) detect any changes that may be made or

attempted after the signature of the specific person is affixed.” 193C IAC 6.9 (542B)

Michigan: Architects, professional engineers, and professional land surveyors may use an embossed seal or a rubber stamp and an original signature only. MICH. ADMIN. Code r.339.15301, 339.16024, 339.17301 (2012).

Minnesota: Licensed architects, professional engineers, land surveyors, professional landscape architects, professional geologist, or professional soil scientists may use a seal on all plans, specifications, plats, and reports and other documents. Minn. R. 1800.4300 (2012) Furthermore, a signature is required for all plans, specifications, plats reports or other documents. The signature may be stamped, handwritten, or electronically created as long as it creates an accurate representation of the licensee’s actual signature. Minn. Stats. Ann. § 326.12 (2012)

Summary of factual data and analytical methodologies

Both the Engineering Section and the A–E Rules committee reviewed similar rules in other states regarding electronic signatures and seals. Discussions were held regarding how to secure electronic seals and signatures in order to avoid misuse or misrepresentation and how to bring the rules in line with subch. II of chapter 137, Stats. regarding electronic signatures. The Board ensures the accuracy, integrity, objectivity and consistency of the data used in preparing the proposed rule and related analysis.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis

The proposed rule will not have any impact on small business as defined in s. 227.114 (1), Stats.

Fiscal Estimate and Economic Impact Analysis

The Fiscal Estimate and Economic Impact Analysis are attached.

Initial Regulatory Flexibility Analysis or Summary

Not applicable.

Environmental Assessment/Statement

Not applicable.

Agency Contact Person

Shawn Leatherwood Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608–261–4438; email at Shancethea.L Leatherwood@wisconsin.gov.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
DOA–2049 (R03/2012)

DIVISION OF EXECUTIVE BUDGET AND FINANCE
101 EAST WILSON STREET, 10TH FLOOR
P.O. BOX 7864
MADISON, WI 53707–7864
FAX: (608) 267–0372

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

2. Administrative Rule Chapter, Title and Number

Section A–E 2.02, Wis. Admin. Code

3. Subject

Electronic seals and signatures.

4. Fund Sources Affected

☐ GPR ☐ FED ☒ PRO ☐ PRS ☐ SEG ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

6. Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect ☐ Increase Existing Revenues ☐ Increase Costs
☐ Indeterminate ☐ Decrease Existing Revenues ☐ Could Absorb Within Agency's Budget
☐ Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy ☐ Specific Businesses/Sectors
☐ Local Government Units ☐ Public Utility Rate Payers
☐ Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

9. Policy Problem Addressed by the Rule

The proposed rule would allow architects, landscape architects, professional engineers, designers and land surveyors to use electronic seals or signatures on all plans, drawings, documents, specifications and reports. Currently, all seals and stamps on drawings and specifications to be filed as public documents are required to be original. However, there is a provision that allows for electronic signatures in Wis. Admin Code A-E 2.02 (7) (b) 2.; but the provision is outdated. The proposed rule draft would allow broader use of electronic signatures to be filed as public documents and update the corresponding citation to subch. II, ch. 137, Stats.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

This proposed rule was posted on the Department of Safety and Professional Services website and on the Wisconsin government website for 14 business days to solicit comments from the public. No businesses, business sectors, associations representing business local governmental units or individuals contacted the department about the proposed rule.

11. Identify the local governmental units that participated in the development of this EIA.

No local governmental units participated in the development of this EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule will not impact business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Electronic seals and signatures will allow greater flexibility in filing plans, specifications, plats, and reports and other documents. The benefit will go towards architects, landscape architects, professional engineers, designers and land surveyors who will be able to choose between electronic seals and signatures or stamped seals and hand written signatures.

14. Long Range Implications of Implementing the Rule

Long range implications of the proposed rule will result in greater efficiency in maintaining records and keeping the affected professions up to date with current advancements in technology.

15. Compare With Approaches Being Used by Federal Government

There are no comparable federal rules.

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Architects, Engineers and Land Surveyors must have a reproducible seal or facsimile, which may be computer generated. Ill. Admin. Code tit. 68 ss. 1150, 1380.295 and 1270.58 Illinois code expressly prohibits the use of signatures generated by computers. Illinois requires original seals only.

Iowa: Professional Engineers and Professional Land Surveyors must use a certification block on original documents. The certification block requires a seal and a signature. A legible rubber stamp or facsimile of a seal may be used. 193C IAC 6.1 (3) (542B) Computer generated seals may be used on final documents. Iowa Professional Engineers and Professional Land Surveyor licensees may affix a handwritten or secure electronic signature to the certification block as long as the signature is protected by a procedure that is, “adequate to (1) verify the signature is that of a specific person and (2) detect any changes that may be made or attempted after the signature of the specific person is affixed.” 193C IAC 6.9 (542B)

Michigan: Architects, professional engineers, and professional land surveyors may use an embossed seal or a rubber stamp and an original signature only. MICH. ADMIN. Code r.339.15301, 339.16024, 339.17301

Minnesota: Licensed architects, professional engineers, land surveyors, professional landscape architects, professional geologist, or professional soil scientists may use a seal on all plans, specifications, plats, and reports and other documents. Minn. R. 1800.4300 (2012) Furthermore, a signature is required for all plans, specifications, plats reports or other documents. The signature may be stamped, handwritten, or electronically created as long as it creates an accurate representation of the licensee’s actual signature. Minn. Stats. Ann. § 326.12

17. Contact Name

Shawn Leatherwood

18. Contact Phone Number

608-261-4438

This document can be made available in alternate formats to individuals with disabilities upon request.

Submittal of Proposed Rules to Legislature

Please check the Bulletin of Proceedings — Administrative Rules for further information on a particular rule.

Children and Families
Safety and Permanence, Chs. 35—59

CR 12-045

The Department of Children and Families announces that it is submitting a rule for legislative committee review, pursuant to s. 227.19, Stats. The proposed rule revises Chapter DCF 55, relating to subsidized guardianship.

The statement of scope for this rule was approved by the Governor on March 13, 2013.

Natural Resources
Environmental Protection—Investigation and Remediation of Environmental Contamination, Chs. NR 700—

CR 12-023

(DNR # RR-04-11)

On March 6, 2013, the Department of Natural Resources submitted a final draft rule to the presiding officer of each house of the legislature, pursuant to s. 227.19, Stats. The

proposed rule revises Chapters NR 169, 700 to 750, relating to investigation and remediation of contaminated properties.

This rule is not subject to s. 227.135 (2), Stats., as affected by 2011 Wis. Act 21. The scope statement for this rule, published in Register No. 660, on December 14, 2010, was sent to LRB prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

Safety and Professional Services —
Cosmetology Examining Board
CR 12-016

On March 12, 2013, the Department of Safety and Professional Services submitted a rule for legislative committee review under s. 227.19, Stats. The proposed rule revises Chapters Cos 2 and 6, relating to supervision of cosmetology and barbering apprentices.

These rules are not subject to s. 227.185, Stats. The statement of scope for these rules, published in Register Number 662, on February 14, 2011, was sent to the Legislative Reference Bureau prior to June 8, 2011, the effective date of 2011 Wis. Act 21.

Sections Affected by Rule Revisions and Corrections

The following administrative code sections had rule revisions and corrections take place in **March 2013**, and will be effective as indicated in the history note for each particular section. For additional information, contact the Legislative Reference Bureau at (608) 266-7590.

Revisions

Editorial Corrections

Corrections to code sections under the authority of s. 13.92 (4) (b), Stats., are indicated in the following listing.

Children and Families

Ch. DCF 150

DCF 150 Appendix C

DCF 150 Appendix D

Justice

Ch. Jus 8

Jus 8.02 (Note)

Jus 8.04 (1) (a)

Jus 8.10

Ch. Jus 9

Jus 9.04 (2) (f)

Jus 9.09

Ch. Jus 11

Jus 11.07 (8) (Note)

Ch. Jus 16

Jus 16.01 (1), (3)

Jus 16.03 (1)

Jus 16.04 (1) (a), (c), (2) (b), (c)

Jus 16.05 (1)

Kickapoo Reserve Management Board

Ch. KB 1

KB 1.05 (9)

Natural Resources

Ch. NR 660

NR 660.07 (3) (Note)

NR 660.10 (15)

NR 660.11 (1) (Note), (2) (Note), (5) (Note)

NR 660.41 (1)

Ch. NR 661

NR 661.02 (4) (b), (c)

NR 661.03 (1) (b)

NR 661.06 (1) (b), (4)

NR 661.11 (1) (c) (Note)

NR 661.20 (3), (Note)

NR 661.30 (2)

NR 661.38 (2) (e), (3) (b), (h), (m)

Ch. NR 662

NR 662.011 (3) (intro.), (a)

NR 662.034 (1) (a), (7) (d)

NR 662.041 (3) (d), (f) (Note)

NR 662.220 (2) (e)

Ch. NR 663

NR 663 subch. A (Note)

NR 663.13 (1) (a)

Ch. NR 664

NR 664.0013 (2) (c) 1.

NR 664.0019 (4)

664.0071 (1) (b) 6., (2) (f)

NR 664.0073 (2) (a)

NR 664.0075 (10) (Note)

NR 664.0098 (7) (a), (c), (d)

NR 664.0099

NR 664.0151 (1) to (6), (6) (b), (14) (Note)

NR 664.0230

NR 664.0257

NR 664.0313

NR 664.0340 (2) (a)

NR 664.1033 (14) (a)

Ch. NR 665

NR 665.0001 (3) (e) (Note)

NR 665.0013 (2) (c) (Note), 1.

NR 665.0071 (1) (b) 6., (2) (f)

NR 665.0073 (2) (a), (b) (Note)

NR 665.0075 (Note)

NR 665.0092 (2) (a)

NR 665.0093 (2) (a)

NR 665.0094 (1) (b)

NR 665.0177 (1), (2)

NR 665.0199 (1)

NR 665.0230

NR 665.0257 (1)

NR 665.0313

NR 665.0406 (1)

NR 665.1033 (13) (a)

NR 665.1081 (23)

Ch. NR 666

NR 666.100 (2) (b) 5., (4) (b), (c), (8)

NR 666.102 (1) (b), (5) (h)

NR 666.103 (2) (b) to (d), (g), (3) (c), (e), (f), (10) (a)

NR 666.104 (1) (b), (2) (b), (3) (c), (5) (b) to (d)
NR 666.105 (1)
NR 666.106 (2) (intro.), (a) to (c), (e), (3) (intro.), (a),
(b), (4) (b), (5), (6) (b), (8)
NR 666.107 (2) (a), (b), (3) (b), (5)
NR 666.109 (1) (b)
NR 666.112 (2) (a) (intro.), (b)
NR 666.240 (1)
NR 666.903 (Note)
NR 666.905 (Note)
NR 666 Appendix IV
NR 666 Appendix VII
NR 666 Appendix XIII

Ch. NR 668

NR 668.40 (footnotes)
NR 668.42 (Note)

Ch. NR 670

NR 670.001 (2) (Note)
NR 670.010 (12)
NR 670.014 (3) (d)
NR 670.022 (intro.), (1) (b)
NR 670.024 (1)
NR 670.025 (2)
NR 670.030 (12) (c)
NR 670.042 (1) (a), (b), (2) (a), (3) (intro.), (4) (a), (b),
(10)
NR 670.062 (intro.), (2) (b) 1. c.
NR 670.066 (3) (b)
NR 670.079 (4)
NR 670.427 (1) (b)
Ch. NR 679
NR 679.12 (3) (c)

Nursing Home Administrator Examining Board**Ch. NHA 1**

NHA 1.02 (2n)

Psychology Examining Board**Ch. Psy 4**

Psy 4.02 (5) (a)

Public Instruction**Ch. PI 16**

PI 16.02 (2)

Ch. PI 24

PI 24.015 (1)

Public Records Board**Ch. PR 1**

(agency name)

Revenue**Ch. Tax 6**

Tax 6.40 (2) (c)

Ch. Tax 14

Tax 14.03 (4) (b)

Ch. Tax 18

Tax 18.05 (1) (b) (Note)

Riverway Board**Ch. RB 1**

RB 1.02 (intro.)

RB 1.03 (1)

Ch. RB 2

RB 2.03 (intro.) (Note)

RB 2.06 (intro.)

State Fair Park board**Ch. SFP 2**

SFP 2.15 (7) (b)

SFP 2.18

Technical College System**Ch. TCS 3**

TCS 3.02 (3) (Note)

TCS 3.13 (intro.) (Note)

Ch. TCS 7

TCS 7.03 (5)

Ch. TCS 13

TCS 13.01 (Note)

TCS 13.03 (intro.) (Note), (1) (Note)

TCS 13.04 (intro.) (Note)

TCS 13.05 (1) (Note)

Ch. TCS 16

TCS 16.01 (Note)

TCS 16.02 (13) (Note)

Tourism**Ch. Tour 2**

Tour 2.01 (Note)

Tour 2.02 (3) (Note)

Tour 2.04 (1) (Note)

Veterans Affairs**Ch. VA 6**

VA 6.01 (3)

VA 6.02 (11)

VA 6.05 (8)

Ch. VA 7

VA 7.01 (4)

Ch. VA 9

VA 9.01 (4)

Ch. VA 10

VA 10.02 (Note)

VA 10.03 (Note)

VA 10.05 (Note)

VA 10.07 (3) (Note), (5) (Note)

Ch. VA 14

VA 14.01 (2), (4), (6), (7)

VA 14.02 (1) (b)

Ch. VA 15

VA 15.02 (3)

Ch. VA 17

VA 17.04

Ch. VA 18

VA 18.01 (3), (4)

VA 18.02 (3)

Workforce Development**Ch. DWD 218**

DWD 218.01

Ch. DWD 274

DWD 274.07

Ch. DWD 290

DWD 290.001 (Note)

DWD 290.01 (Notes)

DWD 290.15 (6) (a) (Note), (b) (Note)

DWD 290.03 (2m) (Note)

DWD 290.09 (1) (Note), (4) (Note)

DWD 290.10 (3) (Note)

DWD 290.11 (1m) (Note), (5) (Note)

DWD 290.12 (Note)

DWD 290.13 (3) (Note)

DWD 290.14 (3) (Note)

DWD 290.16 (Note)

DWD 290.17 (2) (Note)

DWD 290.19 (3) (Note), (4) (Note)

Public Notices

Health and Family Services

Medicaid Reimbursement for Outpatient Hospital Services: Acute Care Hospitals, Children's Hospitals, Critical Access Hospitals, Major Border Status Hospitals, Non State Public, Psychiatric Hospitals, and Rehabilitation Hospitals ***State of Wisconsin Medicaid Payment Plan for Rate Year 2013***

The State of Wisconsin reimburses hospitals for outpatient hospital services provided to Medical Assistance recipients under the authority of Title XIX of the Social Security Act and Chapter 49 of Wisconsin Statutes. This program, administered by the State's Department of Health Services (DHS), is called Medicaid or Medical Assistance.

Effective April 1, 2013, DHS will be implementing the Enhanced Ambulatory Patient Groupings (EAPG) reimbursement system as the new rate setting methodology for all outpatient hospital services. This is a discrete cost-specific reimbursement methodology that will allow DHS to reimburse providers more accurately based on case mix. Acute Care, Psychiatric, Rehabilitation, Children's, Out-of-State, and new hospitals will be paid under the EAPG system using a statewide base rate, which will be adjusted to stay within the State's available funding for outpatient hospital services. Critical Access Hospitals will also be paid using the EAPG system, but the base rate will be based on each hospital's specific, prospective costs.

Due to the redistributive nature of the implementation of the EAPG reimbursement system, DHS has decided to limit the fiscal impact to individual providers during the first year of implementation. Specifically, DHS will limit the financial impact to a +/- 5% corridor of the projected payments a non-Critical Access Hospital would have received under the outpatient per visit reimbursement methodology, effective February 1, 2013. The final base rate, therefore, for each non-Critical Access Hospital is based on this Fiscal Corridor adjustment to the Wisconsin statewide base rate for Rate Year 2013.

The following changes will be contained in the April 1, 2013 outpatient hospital state plan amendment:

- Effective April 1, 2013, outpatient hospital services for all hospitals will be reimbursed using an Enhanced Ambulatory Patient Grouping (EAPG) reimbursement methodology.
- DHS will be applying a Fiscal Corridor Adjustment to the statewide base rate for all Acute Care, Psychiatric, Rehabilitation, and Children's hospitals to limit the fiscal impact of the EAPG reimbursement system during the first year of implementation.

Proposed Change

It is estimated that these changes will have no material impact on projected annual aggregate Medicaid expenditures in state fiscal year 2013. DHS maintains the same hospital budget approved by the Legislature.

The DHS proposal involves no change in the definition of those eligible to receive benefits under Medicaid, and the benefits available to eligible recipients remains the same. The effective date for these proposed changes will be April 1, 2013.

Copies of the Proposed Change

A copy of the proposed change may be obtained free of charge at your local county agency or by calling or writing as follows:

Regular Mail

Division of Health Care Access and Accountability
P.O. Box 309
Madison, WI 53701-0309

State Contact

Krista Willing, Deputy Director
Bureau of Fiscal Management
(608) 266-2469 (phone)
(608) 266-1096 (fax)

KristaE.Willing@wisconsin.gov

A copy of the proposed change is available for review at the main office of any county department of social services or human services.

Written Comments

Written comments are welcome. Written comments on the proposed change may be sent by FAX, email, or regular mail to the Division of Health Care Access and Accountability. The FAX number is (608) 266-1096. The email address is KristaE.Willing@wisconsin.gov. Regular mail can be sent to the above address. All written comments will be reviewed and considered.

All written comments received will be available for public review between the hours of 7:45 a.m. and 4:30 p.m. daily in Room 350 of the State Office Building, 1 West Wilson Street, Madison, Wisconsin. Revisions may be made in the proposed changed methodology based on comments received.

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